

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI
SINGLE BENCH

APPEAL NO. 34/2022
(ARISING OUT OF APPEAL NO. 402/2018)

M/s Pak Corporation (SNTN: S2140576),
Office No. 615, 06th Floor, Anum Blessing,
Block-7/8, Cooperative Housing Societies Union,
Karachi.....Appellant

Versus

Assistant Commissioner (Unit-23),
Sindh Revenue Board, (SRB),
2nd Floor Shaheen Complex,
M.R. Kiyani Road, KarachiRespondent

Date of Transfer of Appeal: 20.04.2022
Date of Hearing: 09.06.2022
Date of Order: 14.11.2022

Syed Faiq Raza Rizvi, Advocate for the appellant.

Mr. Zain Manzoor, AC, (Unit-23)-SRB, Karachi for respondent.

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal was filed by appellant before the Commissioner (Appeals), SRB under section 57(1) of Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) challenging the Order-in-Original (hereinafter referred to as the OIO) No. 977/2018 dated 30.11.2018 passed by Mr. Muhammad Yousuf Bukhari, Assistant Commissioner, (Unit-23), SRB Karachi, and has been transferred to the Tribunal under section 59(7) of the Act for treating the same as an appeal



against the order of Commissioner (Appeals) for disposal in accordance with law.

02. The brief facts of the case as stated in the OIO were that the appellant got voluntarily registration with SRB under service category of "Inter-city transportation or carriage of goods by road or through pipeline or conduit" (Tariff Heading 9836.0000) of the Second Schedule to the Act.

03. It was alleged in the OIO that the appellant declared sales of Rs.34,157,588/- during the tax periods January-2017 to April-2018, with SRB. However, their bank statement revealed that an amount of Rs.89,383,550/- was credited in their business account maintained with M/s Faysal Bank Limited.

04. The appellant vide SRB's letters dated 05.06.2018 and 12-07-20178 issued under section 52(1) of the Act were required to submit the summary of all invoices (taxable as well as non-taxable) issued during 1st July, 2016 up to 31st May, 2018, copy of Income Tax Return of 2016-17 & Sales Tax returns filed with other Sales Tax Authorities, in order to justify their declarations. However, the aforementioned information was not submitted.

05. The appellant was served with Show-Cause Notice (SCN) dated 16.08.2018, to explain as to why Sindh Sales Tax (SST) liability of Rs.7,179,275/- @ 13% on short declared revenue of Rs.55,225,962/- for tax periods from January-2017 to April- 2018, may not be assessed against it under section 23(1A) of the Act along with default surcharge under section 44 of the Act. Besides the appellant was also required to explain as to why penalty under Serial No. 3 and 15 of the Table under section 43 of the Act may not be imposed against it for violation of section 8 and 17 and section 52(1) of the Act respectively.



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06. In response to the SCN the representative of the appellant appeared and submitted that amount of Rs.1,932,172/- reflected in their bank statement were related to profit received from the Bank on maintaining saving account, and the amounts of Rs.6,737,000/- were related to contra entries (dishonoured cheques) which were incorporated in the show cause notice. He also submitted relevant supportive evidences. The representative of the appellant submitted written reply dated 20.09.2018 along with details of credit entries and sales invoices amounting of Rs.40,922,542/- declared in monthly Sindh Sales Tax Returns (SSTR).

07. The information provided by the appellant were cross checked and reconciled with the SSTR of the appellant and the aforementioned amount of Rs.47,852,814/- (Rs.40,922,542/-) (declared in the SST returns) + 6,737,000 (dishonoured cheques) + Rs.1,932,172/- (profit of saving account) were accordingly excluded from the scope of show cause notice.

08. The Assessing Officer (AO) passed OIO under section 23(1A) of the Act determining the SST at Rs.5,398,995/- along with default surcharge under section 44 of the Act. The AO imposed penalty of Rs.269,949/- under Serial No. 3 of the Table under section 43 of the Act and penalty of Rs.100,000/- under Serial No 15 of Table under section 43 of the Act for contravention of section 52 (1) of the Act.

09. The appellant challenged the said OIO by filing appeal under section 57 (1) of the Act before Commissioner (Appeals), SRB who instead of hearing and deciding the appeal himself within the time provided in law transferred the same after sufficient delay to the Tribunal under section 59 (7) of the Act for decision treating the same as appeal filed against the order of Commissioner (Appeals).

10. The Commissioner (Appeals) in his report stated that the appeal was filed on 26.12.2018 and a total number of 1208 days were lapsed out of which the appellant obtained adjournments of 877 days. The remaining



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days were 331 days were lapsed and the time for passing the OIA was expired on 17.11.2021 when the period of 180 days provided under section 59 (5) of the Act was expired. This appeal was belatedly transferred to the Tribunal on 22.04.2022.

11. The learned advocate for the appellant Syed Faiq Raza Rizvi submitted as under:-

- i. The SCN was issued in the sum of Rs.188,345,738/- charging SST of Rs.20,044,459/- @ 13% instead of 8% as applicable during the tax periods involved without any explanation from where this amount was taken.
- ii. The AO while passing the OIO had reduced SST liability to Rs.5,398,995/- against the alleged suppressed sales of Rs.41,530,736/-.
- iii. The AC in the reconciliation dated 31.05.2022 further reduced the value of service to Rs. Rs.4,924,507/- involving the SST of Rs.640,186/=.
- iv. The OIO was passed beyond the scope of SCN dated 16.08.2018 and the OIO was not maintainable being passed only in consideration of credit entries available in the Bank Statement.
- v. The burden to prove that the credit entries in the bank statement were all related to providing service was on the department and relied upon section-III and section 136 of the Income Tax Ordinance, 2001. He also relied upon the reported case of M/s Naseem Plastic House versus The Commissioner Inland Revenue, RTO Faisalabad, 2019 PTD (Trib.) 1583 a judgment by the Appellate Tribunal, Inland Revenue.

12. The learned Assistant Commissioner, SRB Mr. Zain Manzoor submitted as under:-

- i. The credit entries which could not be clarified by the appellant were taxable as the said amount was credited in a business account.



- ii. The SST was duly reconciled in the light of the details provided by the appellant and the SST was charged only on the amount which the appellant failed to reconcile.
- iii. The final Reconciliation Report dated 09.06.2022 was filed showing SST of Rs.393,961/- @ reduced rate of SST of 8% and penalty of Rs. 19,698/- under Serial No. 3 of the Table under Section 43 of the Act and penalty of Rs. 100.000/- under Serial No. 15 of the Table under Section 43 of the Act.
- iv. The appellant despite various opportunities deliberately withheld the due STT and caused loss to public exchequer and was liable to pay penalties and default surcharge.
- vi. In the Act there is no provision like Section 111 and 136 as available in the income tax ordinance, 2001 and the provision of other statutes could not be imported and relied upon.
- vii. The Department has discharged its burden by confronting the credit entries in a business account, but the appellant failed to rebut that the credit entries were not related to sale of service.

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

14. It was not disputed that the appellant was registered with SRB on 22.02.2017 under service category of intercity transportation or carriage of goods by road or through pipeline or conduit", Tariff Heading 9836.0000. The SCN was issued confronting the SST of Rs.20,044,459/= which was reduced to Rs.5,398,995/- while passing OIO. In the final Reconciliation Report submitted before me the SST was further reduced to Rs.393,961/= alongwith default surcharge to be calculated at the time of payment and penalties of Rs.119,698/=.

15. The OIO was not passed beyond the scope of SCN dated 16.08.2018. The reducing of the value of sales and SST in consideration of the evidence and material provided by the appellant does not tantamount that the OIO was passed beyond the scope of SCN. The amount confronted in the SCN



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was in respect of transportation service and OIO was also passed in respect of service of transportation provided or rendered by the appellant.

16. The OIO was not passed only in consideration of credit entries available in the bank account. The AO considered all the evidence and material provided by the appellant and the amount confronted in the SCN was accordingly reduced.

17. The SST was rightly charged on the basis of credit entries available in a business account which could not be clarified by the appellant. The department has discharged its burden but the appellant failed to discharge its burden by clarifying the credit entries.

18. The appellant was provided with full opportunities to clarify the credit entries but the appellant failed or was unable to prove that the said credit entries were not related to sale of services.

19. A question was arose whether the appeals which have not been decided by Commissioner (Appeals) within the statutory period could be transferred to the Tribunal within the time provided under sub-section (5) read with sub-section (6) and (7) of section 59 of the Act or the Commissioner (Appeals) is at liberty to transfer the appeals to the Tribunal according to his convenient and whims.

20. In this matter none of the parties have provided proper assistance to the Tribunal in this regard. However this point was also raised in other appeals transferred to the Tribunal, and the same would be decided on merits accordingly.

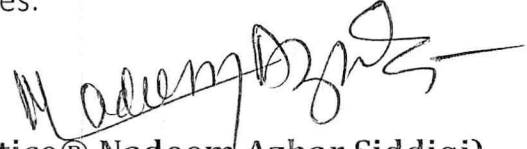
21. In view of the above the appeal is partly allowed. The OIO is maintained to the extent of payment of SST of Rs.393,961/- alongwith default surcharge under section 44 of the Act and is setaside in respect of other amount of SST in the OIO. However, if the appellant failed to deposit the SST within fifteen days from the date of receipt of copy of this order it is



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also required to pay penalties of Rs.119,698/= as provided in the final Reconciliation Report.

20. The appeal is disposed of. The copy of the order may be supplied to the learned representatives of the parties.



(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:

Dated: 14.11.2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-23), SRB, for compliance

Copy for information to:-

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

Certified to be True Copy



REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

15/11/2022

Registrar

Order Dispatched on

15/11/2022

Registrar