

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

APPEAL NO. 41/2022
(ARISING OUT OF APPEAL NO. 247/2019)

M/s Khokhar Carriers, (SNTN # 4120578-2)
Plot No. 14, Room No-14-15,
2nd Floor, A & K Chamber,
West Wharf Road,
Karachi.....Appellant

Versus

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

Date of Transfer of Appeal 06.05.2022
Date of hearing 13.09.2022
Date of Order 03.11.2022

Amanat Ali, Advocate for the appellant.

Mr. Muhammad Danish Khan, (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 684/2019 dated 27.09.2019 Passed by Mr. Tashkeel Hussain, Assistant Commissioner, (Unit-12), SRB Karachi, and has been transferred to the Tribunal under section 59 (7) of the Act treating the same as it is has been filed against the order of Commissioner (Appeals) for disposal in accordance with law.

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02. The facts as stated in the OIO were that the appellant was voluntarily registered with SRB as AOP on 08.06.2016 under the service category of "Service provided or rendered by persons engaged in intercity transportation or carriage of goods by road or through pipeline or conduit, failing under Tariff Heading 9836.0000 of the Second Schedule to the Act which was chargeable to Sindh Sales Tax (SST) at the reduced rate read with rule 42G of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules).

03. It was alleged in the OIO that during the scrutiny of the tax profile of the appellant available with SRB it was observed that the appellant filed NULL returns for the tax periods August-2016 to December-2018, despite the fact that the appellant was engaged in providing or rendering of the aforesaid taxable services and as per record available with SRB a consideration of Rs.226,084,312/- (involving SST amount Rs.18,086,745/- at the rate of 8%) was credited in business bank account of the appellant maintained with M/s Habib Bank Limited.

04. The appellant vide SRB notice dated 09.02.2019 was required to deposit unpaid SST of Rs.18,086,745/- along with default surcharge (DS) under section 44 of the Act and justify the reason for NULL declaration and non-payment of the aforesaid SST. The appellant was also informed that false declaration comes within the ambit of Tax Fraud in terms of the Section 2(94) of the Act. The appellant was also required to e-file SST returns for the tax periods June, 2016 and July, 2016 under Section 30 of the Act. The appellant sought extension of time for compliance through email dated 19.02.2019 and email dated 13.03.2019, but no compliance was made. The appellant vide SRB notice dated 05.01.2019 was also required to provide the following information/ record.

- a. Income Tax Returns for the financial year 2016-17 & 2017-18.
- b. Bank Statement for the period from 08.06.2016 to 31.12.2018
- c. Summary list of all sales invoices (long with copies of those invoices) for the period from 08.06.2016 to 31.12.2018.



The appellant failed to provide the above record.

05. The appellant was served with a Show-Cause Notice (SCN) dated 06.04. 2019 to explain as to why the tax liability of Rs.18,086,745/- should not be assessed and determined under section 23 of the Act alongwith DS under section 44 of the Act. The appellant was also asked to explain as to why penalties under Serial No. 2, 3, 6(d), 11, 12 & 15 of the Table under section 43 of the Act should not be imposed for violation of several provisions of the Act.

06. The representative of the appellant appeared for hearing before the Assessing Officer (AO) and submitted that the appellant has withheld the tax in Punjab during the tax periods and had deposited tax with Punjab Revenue Authority (PRA). The representative further submitted that the clients of appellant were based in Punjab and refused to pay the SST and provided the list of those clients. It was also stated by the representative of the appellant that it has not charged, collected and the SST and had not deposited the SST with SRB.

07. The Assessing Officer passed OIO determining the SST at Rs.18,086,745/- under section 23 of the Act along-with DS under section 44 of the Act for contravention of the sections 3, 8, 9 & 17 of the Act, 2011 read with rule 14 and 42G of the Rules.. The AO also imposed penalties as



The penalty of Rs.310,000/- (Rs.10,000/- per month for failure to e-file true and correct of SST returns for the tax periods Jun-2016 to Dec-2018) as per serial No. 2 of the table under section 43 of the Act, 2011.

ii) The penalty Rs.904,337/- (5% of the Principal/ Tax amount i.e. Rs.18,086,745/-) as per serial No.3 of the table under section 43 of the Act, 2011.

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iii) The penalty of Rs.18,086,745/- (100% of the Principal/ Tax amount i.e. Rs.18,086,745/-) as per serial No.6 (d) of the table under section 43 of the Act, 2011.

iv) The penalty of Rs.904,337/- (5% of the Principal/ Tax amount i.e. Rs.18,086,745/-) as per serial No.11 of the table under section 43 of the Act, 2011.

v) The penalty of Rs.904,337/- (5% of the Principal/ Tax amount i.e. Rs.18,086,745/-) as per serial No.12 of the table under section 43 of the Act, 2011.

vi) The penalty of Rs.100,000/- per serial No.15 of the table under section 43 of the Act, 2011.

08. The appellant challenged the said OIO by filing appeal before Commissioner (Appeals), SRB who was appointed under section 34 of the Act to hear appeals filed under section 57 (1) of the Act. The Commissioner (Appeals) instead of deciding the appeal himself within the time provided under sub-section (5) and (6) of section 59 of the Act transferred the same to the Tribunal invoking sub-section (7) read with sub-section (8) of section 59 of the Act to treat the same as if it has been filed against the order of Commissioner (appeals).

Mr. Amanat Ali, the learned advocate for the appellant at the very outset submitted that under the direction of Commissioner (Appeals) the then AC prepared a Joint Reconciliation Report dated 05.04.2021 signed by the AC and the representative of the appellant and submitted the same to the Commissioner and place on record the copy of the same. He further submitted that the AC in the OIO had charged SST only on the basis of credit entries available in the Bank Statement and had also charged SST on the services provided in other jurisdictions, and while preparing the Reconciliation the then AC excluded the value of services provided in other jurisdiction and the credit entries which were not related to providing of Transportation Services. He further submitted that then the AC determined



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the SST of Rs.564,268/- which was deposited on 02.06.2021 and submitted that appropriate order may be please be passed.

10. The learned AC-SRB Mr. Muhammad Danish Khan confirmed that the said Reconciliation Report dated 05.04.2021 was prepared by the then AC and submitted before Commissioner (Appeals) on 16.04.2021. He further submitted that he has gone through the record of the case and is in full agreement with the Reconciliation Report and confirmed that the amount determined in the Reconciliation Report was deposited and has no objection for disposing of the appeal. However, he requested that the penalties for non-filing of true and correct SST returns and late payment of SST alongwith default surcharge may be passed against the appellant.

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

12. The AO while passing the OIO apparently failed to consider the pleas raised by the appellant before him resulting in passing of the OIO for exaggerated amount of SST and penalties. The Reconciliation Report is reproduced below.



Reconciliation Report of M/s Khokhar Carriers

On the directions of honorable Commissioner (Appeals) the appellant approach this office 25th February, 2021 and undersigned AC required them to provide the all copies of invoices issued to clients in order to reconcile the amount assessed in Show-Cause-Notice dated 06th April, 2019.

On 24th March, 2021, copy of invoices were submitted by appellant and all submitted invoices has been examined and following calculations have been made.

S. No	Description	Total Value Amount	Sales Tax (if Involved)
1	Out of Sindh (Punjab)	205,687,893	-
2	Miscellanies Transactions	2,572,000	-
3	Intra City	10,771,059	-
4	Sindh	6,763,360	541,068
5	Total	225,794,312	-

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6	Less SCN Assessed Amount	226,084,312	-
7	Difference (Not Reconciled)	290,000	23,200
	Total Payable		564,268

Sd.
Tax payer

Sd.
AC Unit 23
Hamad ALI

13. Since the AC-SRB has accepted the amount of SST determined in the Reconciliation Report and the same was also deposited with SRB as far back as on 02.06.2021 the matter of SST stand resolved.

14. It may be noted that vide Notification date 31.05.2021 the SRB exempted the whole amount of penalty and such of the default surcharge as in excess of the amount of default surcharge specified in the said Notification. The relevant portion of the Notification is reproduced as under:-

(a) the principal amount of tax (as outstanding on 31.05.2021) alongwith zero default surcharge thereon if deposited during the period from 1st June, 2021 to 12th June, 2021.

15. The appellant had deposited the determined amount of Rs.564,268/= on 02.06.2021 and the above clause is fully applicable to its case and in view of the above clause the appellant was not liable to pay any default surcharge and several types of penalties mechanically imposed by the OIO without application of mind and without considering whether the same were applicable or not.

16. The Commissioner (Appeals) has transferred this appeal to the Tribunal under sub-section (7) read with sub-section (8) of section 59 of the Act. It is evident from the Report submitted by the Commissioner (Appeals) that the Appeal was filed by the appellant (tax payer) on 22.10.2019 under sub-section (1) of section 57 of the Act against the Order-In-Original (OIO) No.684/2019 dated 27th September, 2019. The appeal remained pending before the Commissioner (Appeals), SRB for 919 days out of which the

appellant had sought adjournments for 566 days. As per the report the total days left for deciding the appeal were 353 days in which the Commissioner (Appeals) could not decide the appeal. The statutory period available with Commissioner (Appeals) was 180+60= 240 excluding the adjournments sought by the appellant. The transfer of undecided appeal to the Tribunal is to be treated as if the appeal has been filed against the order of Commissioner (Appeals), SRB.

17. A question was arose whether the appeals which have not be decided by Commissioner (Appeals) under 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.

18. In this matter since the appellant had already deposited the SST with SRB, none of the parties in the instant appeal 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.

19. In view of the above the appeal is partly allowed. The OIO is maintained to the extent of Rs.564,268/= and is setaside in respect of other amount of SST and penalties in the OIO.

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

Karachi:

Dated: 03.11.2022


(Justice® Nadeem Azhar Siddiqi)

CHAIRMAN

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy Supplied for compliance:

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

Copy for information to:-

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

Order issued on

04/11/2022

Registrar

Order Dispatched on

04/11/2022

Registrar