

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI

SINGLE BENCH

APPEAL NO. AT-80/2022

M/s Dadan & Company,
Khan Brothers Petroleum,
Near Bypass, Daharki, Sindh.Appellant

Versus

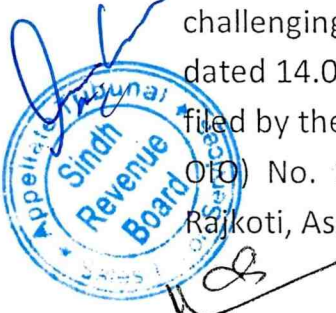
The Assistant Commissioner (Unit-33),
Sindh Revenue Board, (SRB)
Bungalow No. A4, Jaffria Housing Society,
Opposite Magsi Kanta, main Shikarpur
Road, Sukkur. Respondent

Date of filing of Appeal 21.06.2022
Date of hearing 13.03.2023
Date of Order 28.03.2023

Mr. Tahir Mustafa Soomro, Advocate for the appellant.
Mr. Shareef Malik, DC-DR, SRB along-with Syed Athar Ali Shah, AC on behalf of
Mr. Ghulam Murtaza Shar, DC-(Unit-33), SRB Sukkur for the respondent.

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. 85/2022 dated 14.06.2022 passed by the Commissioner (Appeals) in Appeal No. 114/2016 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 10/2016 dated 10.03.2016 passed by Mr. Muhammad Shoaib Iqbal Rajkoti, Assistant Commissioner, SRB Sukkur.



02. The brief facts as stated in the OIO were that the appellant having SNTN: 1447673-8 was registered with SRB for providing or rendering services of Contractor of Building (Including Water and Sanitary Works), Electrical and Mechanical Works (Including Air-conditioning), Multi-Disciplinary Works and Turn Key Projects service classified under Tariff Heading 9814.2000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act), which was subjected to levy of Sindh Sales Tax (SST).

03. It was alleged in the OIO that the scrutiny of the sales tax profile of the appellant shows that it had provided services to M/s Mari Petroleum Company Limited (MPCL) which involved Sindh Sales Tax (SST) of Rs.2,912,056/- in which an amount of Rs.793,974/- was withheld and deposited by M/s MPCL, but the appellant has failed to pay the remaining amount of SST of Rs.2,118,082/- for the service provided during the period from July, 2013 to August, 2015.

04. The appellant was served with a Show-Cause Notice (SCN) dated 30.10.2015 to explain as to why the SST liabilities of Rs.2,118,08/- may not be assessed in terms of the provisions of section 23 of the Act in addition to the liability of default surcharge under section 44 of the Act. The appellant was further asked to explain as to why penalties under serial No. 3, 11, 12 and 13 of the Table under section 43 of the Act should not be imposed for the violation of the provisions of the Act and the Rules made thereunder.

05. The hearing in this case was fixed on 06th November-2015 but no one appeared on the due date on behalf of the appellant nor was any written reply filed. Therefore, the appellant was provided an opportunity of hearing on 23.11.2015. A Letter was received from the appellant on 18.11.2015 as under:

"that the amount of Rs.793,974/- withheld and deposited by M/s Mari Petroleum Limited pertains to the service of Labour and Manpower Supply Services. However, amount of Rs.2,118,082/- was lying with services of Civil Works Contracts, the same has not been paid by the Mari Petroleum to the Contractor nor payment was deposited in SRB account because the reason is that the same was exempt as per our agreement".

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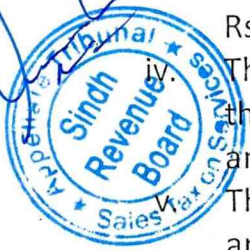
06. The representatives of the appellant appeared on 11.02.2016 and submitted that it had not received any SST from MPCL during the periods from July-2013 to August-2015.

07. The Assessing Officer (AO) passed the OIO and held that the appellant has provided services to MPCL and determined the SST at Rs.2,118,082/- and ordered the recovery of the said amount with default surcharge. The AO also imposed penalty of Rs.105,904/= under Serial No. 3 of the Table under section 43 of the Act.

08. The appellant challenged the OIO before Commissioner (Appeals), SRB by filing appeal, which appeal was dismissed for non-prosecution. Hence, this appeal.

09. The learned advocate Mr. Tahir Mustafa Soomro for the appellant submitted as under:-

- i. In this case no SCN was served upon the appellant and the OIO was passed without providing right of hearing to the appellant.
- ii. The appellant was voluntarily registered on 27.02.2014 and the appellant was not liable to charge, collect and pay SST prior to the date of its registration.
- iii. The SST liability prior to registration was withheld by MPCL and the entire tax on the services of Labor and Manpower amounting to Rs.218,759/- was deposited with the SRB.
- iv. The SST after the registration of the appellant was entirely withheld by the service recipient MPCL and deposited the same with SRB and no amount of SST was due and payable.
The MPCL has declared certain services as exempted and non-taxable and no SST was passed on to the appellant.
- vi. The AC is unnecessary confusing the matter by filing the Reconciliation Reports without any substance and without considering that the MPCL has deposited all dues SST.
- vii. The reconciliation report of 07.02.2023 is clear that no SST prior or after the date of registration is due and payable by the appellant.



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- viii. As per the latest reconciliation report dated 28.02.2023 submitted by the DC (Unit-33) on 1st March, 2023 it was clear that prior and after the registration of the appellant with SRB the service recipient MPCL has withheld the entire SST and deposited the same with SRB.
- ix. The MPCL even before the date of registration of the appellant deposited SST with SRB except on account of seven (07) invoices which the MPCL has disclosed in its SST returns and declared the same exempted from payment of SST.
- x. The appeal was dismissed for non-prosecution without providing proper hearing opportunity and without serving hearing notice upon the appellant and the said order is illegal and without jurisdiction and is liable to be set aside.
- xi. The Commissioner (Appeals) has erroneously relied upon the judgment reported as M/s Abdul Wahid v/s Haji Abdul Wudood, 1997 SCMR 1338 which has distinguishing facts and is not applicable to the facts of the case as in hand.

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

- i. The SCN was properly served upon the appellant who not only filed the reply but its representative was also appeared for hearing and its contention was considered by the then AO.
- ii. The appellant has provided taxable services before its registration and was liable to be registered and required to pay SST.
- iii. The reconciliation report was prepared and submitted under the direction of the Tribunal from which it was established that SST was not paid for the period July-2013 to February-2014.
- iv. The appellant being service provider of taxable services is required to charge, collect and pay the SST to SRB and could not escape its liability under its plea of non-registration.



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- v. The service recipient MPCL has declared certain taxable services as exempted from SST without providing copies of contract and invoices and such services could not be treated as exempted.
- vi. The SST liability of Rs.2,118,082/= was determined after hearing the appellant who failed to satisfy the AO.
- vii. The service recipient of the appellant MPCL has not provided any supporting documents in support of seven (07) invoices despite sending of letter dated 18.01.2023 and the same service recipient is required to pay Rs.2,118,082/- to SRB along-with penalty of Rs.105,904/- and default surcharge to be calculated at the time of payment of SST.
- viii. The reconciliation report was prepared with the assistance of the appellant and after considering the documents provided by the appellant.
- ix. The appeal filed by the appellant before the Commissioner (Appeals), SRB was rightly dismissed for non-prosecution as the appellant despite receiving the hearing notices failed to appear and could not blame others for his own negligence.
- x. The Commissioner (Appeals), SRB has rightly relied upon the reported case of Supreme Court doe dismissing the appeal for non-prosecution.

11. I have heard the learned representatives of the parties and perused the record made available before me.

12. The contention of the learned advocate for the appellant was that it was registered on 27.02.2014 and was not liable to charge, collect and deposit the SST before the date of its registration i.e. from July-2013 to February-2014. He further submitted that he had provided Construction Services to MPCL who had shown their services in its withholding statement as exempted as such neither the SST was charged nor collected from MPCL nor the appellant was liable to pay the same to SRB.



13. The plea of department was that whether the appellant was registered or not it has provided taxable services it was liable to charge, collect and pay the SST and relied upon the definition of registered person provided under sub-section (71) of section 2 of the Act which provides that *“registered persons means a person who is registered or liable to be registered under this Act or any other person or class of persons notified by the Board in the official Gazette”*.

14. The definition clause in a statute is declaratory in nature and to be considered while interpreting the words used in the statute. This view gains support from the decision of Lahore High Court in the case of Commissioner Inland Revenue, Gujranwala vs. S.K. Steel Casting Gujranwala, 2019 PTD 1493 wherein it was held as under:-

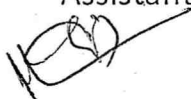
“.....16. Needless to say that under the law, a definition clause in a statute is of a declaratory nature. Though normally the definitions provided for in the definition clause are to be read into the provisions of the Act while interpreting the defined terms/words, but if the contents of the provisions of the Act indicate otherwise, the definition clause cannot override a main provision of the statute. Definition clause is foundational when construing provisions of law.....”

15. The status of definition clause was considered by the Honorable Supreme Court in the case of Chairman, Federal Board of Revenue versus M/s Al-Technique Corporation of Pakistan Limited, PLD 2017 SC 99 as under:-

“It is settled that a definition clause is foundational when construing provisions of law. The definition given in the Act should be so construed as not to be repugnant to the context and would not defeat or enable the defeating of the purpose of the Act. It must be read in its context and the background of the scheme of the statute and the remedy intended by it”.

16. The Commissioner (Appeals) in his various OIAs have held that SST cannot be demanded from a service provider prior to its date of registration, few of such OIA's are mentioned for ready reference as under:-

- a) Appeal No.73/2018, OIA No.97/2020 M/s Sinopec International vs. Assistant Commissioner (Unit-03), SRB dated 03.11.2020.



b) Appeal No.308/19, OIA No.109/2020, dated 02.12.2020, and Appeal No.456/2018, OIA No.110/2020, dated 02.12.2020, M/s Fiber Link vs. Assistant Commissioner (Unit-01), SRB.

c) Appeal No.303/2019, OIA No.95/2019, dated 28.10.2020, M/s Tracking World vs. Assistant Commissioner (Unit-01), SRB.

17. The above view of Commissioner (Appeals) has been upheld in our various pronouncements. Few of such decisions are mentioned for ready reference as under:-

a) AT-47/2020 dated 15.02.2021 – AC (Unit-04) vs. M/s MYN Pvt. Ltd.

b) AT-234/2015 dated 26.11.2019 – Nasir Khan & Sons vs. Commissioner (Appeals) & DC (Unit-13), SRB.

c) AT-30/2019 dated 05.03.2021, TCS Logistics vs. The Commissioner, SRB.

18. The appellant being the un-registered person was not liable to charge, collect and pay the SST to SRB during the periods from July-2013 to February-2014. The liability was on the service recipient to deduct and pay SST to SRB. The Board with the approval of the Government of Sindh in exercise of power vested in it under section 72 of the Act read with sub-section (4) of section 3, sub-section (3) of section 9 and section 13 of the Act had framed Sindh Sales Special Procedure (Withholding Rules) 2011 (hereinafter referred to as the Withholding Rules, 2011). However, after repealed of Withholding Rules, 2011, the Board with the approval of Government of Sindh framed Sindh Sales Special Procedure (Withholding Rules) 2014 (hereinafter referred to as the Withholding Rules, 2014) effective from 01.07.2014. The tax periods involved in this appeal were from July-2013 to February-2014 and was covered under Withholding Rules, 2011.

19. The responsibility of withholding agent was provided under Rule 3 of the Withholding Rules, 2011. Sub-rule (3) of the rule 3 of the Rules, 2011 provided that "a withholding agent having Free Tax Number (FTN), or National Tax Number



(NTN) and falling under clause (a), (b), (c), (d), or (e) of sub-rule (2) of rule 1, shall on receipt of taxable services from unregistered persons, deduct sales tax at the applicable rate of the value of taxable services provided or rendered to him from the payment due to the service provider and, unless otherwise specified in the contract between the service recipient and the service provider, the amount of sales tax for the purpose of this rule shall be worked out on the basis of gross value of taxable services”.

20. It is evident from reading the above provisions framed under section 13 of the Act that these have overriding effect over other provisions of the Act and it was clear that the responsibility for payment of SST was shifted upon the service who deals with unregistered person. Section 13 of the Act is a special provision which deals with the responsibility of payment of SST and has an overriding effect on the other provisions of the Act. In the reported judgment of State versus Zia-Ur-Rehman PLD 1973 SC 49 it was held as under:-

“...It is well-established rule of interpretation that where in a statute there are both general provisions as well as special provisions for meeting a particular situation, then it is the special provisions which must be applied to that particular case or situation instead of the general provisions.

21. This Tribunal In its earlier decisions in the case of M/s WEB DNA Works versus Assistant Commissioner (Unit-11), Sindh Revenue Board, Appeal No. AT-18/2021 decided on 16.11.2021 and Assistant Commissioner, (Unit-03) Sindh Revenue Board versus M/s Sinopec International Petroleum Services, Appeal No. At-50/2020 dated 14.02.2022 has taken the similar view, which was to date not disturb by our superior courts.

22. The plea of the appellant was that the SST was entirely withheld and deposited by MPCL with SRB and no loss has been caused to the exchequer. This position is also confirmed from the Final Reconciliation Report dated 01.03.2023 submitted by the DC-SRB. It was also confirmed that except for seven invoices the SST was declared and paid by MPCL. The MPCL declared the services exempted from payment of SST and it was required to explain the same and not the appellant.



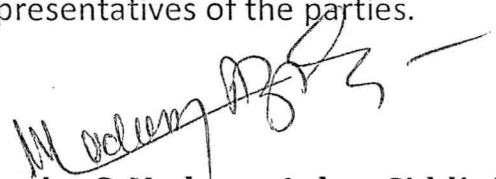
23. From the Final Reconciliation Report Dated 01.03.2023 it was also clear that the SST for the periods from March-2013 to August-2015 was paid and no SST was due and payable.

24. In view of the above discussions it is held that the appellant was not liable to pay/deposit SST before the date of ITS registration with SRB. The responsibility of payment of SST is upon the service recipient who has received the services from an un-registered person. The department is at liberty to initiate proceedings against MPCL in respect of seven invoices which were declared exempted from payment of SST by MPCL.

25. The appeal is allowed and both the OIO and OIA are set aside. The copy of this order may be provided to the learned representatives of the parties.

Karachi:

Dated: 28.03.2023


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Copy Supplied for compliance:


- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-33), SRB, Sukkur.

Copy for information to:-

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

Certified to be True Copy


28-03-2023
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

28-03-2023
Order issued on-----

Registrar

28-03-2023
Order Dispatched on-----

Registrar