

**BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI**

**SB-I**

**APPEAL NO. AT-29/2023**

M/s Nitesh Kumar Govt. Contractor,  
House No. 2, Brhaman Mohalla, Mithi,  
Tharparkar..... Appellant

**Versus**

The Assistant Commissioner (Unit-34A),  
Sindh Revenue Board (SRB),  
Bungalow, No. 1340/1,  
Opposite Gamma Stadium,  
M.A Jinnah Road, Mirpurkhas.....Respondent

Date of filing of Appeal 28.02.2023  
Date of hearing 10.08.2023  
Date of Order 11.08.2023

Mr. Adil Salam, ITP for the appellant.

Mr. Shareef Malik, DC-DR, SRB and Mr. Nabi Bux Shar, AC-SRB Mirpurkhas, for respondent.



**ORDER**

**Nadeem Azhar Siddiqi:** This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 178/2022 dated 30<sup>th</sup> December, 2022 passed by the Commissioner (Appeals) in Appeal No. 193/2019 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 371/2019 dated 16.05.2019 passed by Syed Rizwan Ali Deputy Commissioner, SRB Hyderabad.

*Handwritten signature/initials*

02. The brief facts of the case as stated in the OIO were that the appellant having SNTN:2924938-4, was registered with SRB under Tariff Heading 9809.0000 (contractual execution of work or furnishing supplies) of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (The Act) for the purpose of levying Sindh Sales Tax (SST) on services. The person registered SRB was required to charge, collect and pay SST and to e-file true and correct monthly sales tax returns.

03. It was alleged in the OIO that from scrutiny of the tax profile of the appellant and monthly sales tax returns e-filed for the tax periods February, 2017 to December, 2018, it appeared that the appellant provided or rendered services to various departments in Sindh for a value of Rs.15,543,196/-, involving SST amount Rs.2,02,615/-. However, the appellant did not deposit any SST amount with SRB. Details are given below in table-1:

Tax period	Buyer Name	Sale value	SST Payable
Apr-17	PUBLIC HEALTH ENGINEERING DEPARTMENT, SINDH.	1,496,475	194,542
Apr-17	PUBLIC HEALTH ENGINEERING DEPARTMENT, SINDH.	1,087,840	141,419
Apr-17	PUBLIC HEALTH ENGINEERING DEPARTMENT, SINDH.	1,306,062	169,788
May-17	PUBLIC HEALTH ENGINEERING DEPARTMENT, SINDH.	1,389,498	180,635
May-17	PUBLIC HEALTH ENGINEERING DEPARTMENT, SINDH.	1,203,299	156,429
Jun-17	PUBLIC HEALTH ENGINEERING DEPARTMENT, SINDH.	2,209,780	287,271
Jun-17	PUBLIC HEALTH ENGINEERING DEPARTMENT, SINDH.	2,215,773	288,050
Oct-17	MUNCIPAL COMMITTEE MITHI	729,409	94,823
Nov-17	PUBLIC HEALTH ENGINEERING DEPARTMENT, SINDH.	872,702	113,451
Feb-18	MUNCIPAL COMMITTEE MITHI	792,514	103,027
Jun-18	MUNCIPAL COMMITTEE MITHI	489,930	63,691
Aug-18	MUNCIPAL COMMITTEE MITHI	273,066	35,499
Aug-18	PUBLIC HEALTH ENGINEERING DEPARTMENT, SINDH.	605,850	78,761



Sep-18	LOCAL GOVT., KATCHI ABADI	672,522	87,428
Sep-18	MUNCIPAL COMMITTEE MITHI	79,021	10,273
Sep-18	MUNCIPAL COMMITTEE MITHI	79,455	10,329
Sep-18	MUNCIPAL COMMITTEE MITHI	20,000	2,600
Sep-18	MUNCIPAL COMMITTEE MITHI	20,000	2,600
Nov-18	PUBLIC HEALTH ENGINEERING DEPARTMENT, SINDH.	1,142,640	148,543
	Grand Total	15,543,196	2,020,615

04. The Assessing Officer (AO) determined the SST at Rs.2,020,615/-, under sub-section (1) of section 23 of the Act to be recovered alongwith default surcharge. The AO also imposed penalty of Rs.113,116/- under Serial No.3 of Table under section 43 of the Act.

05. The appellant challenges the OIO before Commissioner (Appeals), SRB by way of filing appeal under section 58 of the Act. The appeal was dismissed. The operative part is reproduced as under:-

*"06. The appellant has failed to appear in person or through pleader despite of the hearing Notices as such and sought adjournments for uncertain period of time. Accordingly, the appeal is hereby dismissed for non-prosecution. The appellant is directed to pay the adjudged amounts as per the OIO forthwith without fail. In the event of failure the Appellant to pay the amount adjudged in the OIO, the respondent may recover the same. Order accordingly".*

06. The learned ITP for the appellant submitted as under:-

- i. The OIO was passed without serving Show-Cause Notice (SCN) upon the appellant.
- ii. The most of the work was carried out for Government of Sindh funded from Annual Development Programme (ADP) and during the tax periods involved the same were either exempted from payment of SST or liable for reduced rate of SST.
- iii. The copy of OIO was not served upon the appellant.

*M. O. S.*

iv. The appeal was dismissed for non-prosecution without service of hearing notice upon the appellant or his representative.

v. The Commissioner (Appeals) erroneously relied upon the judgment reported as Abdul Wahid versus Haji Abdul Wadood, 1997 SCMR 1338, which was not applicable.

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

i. The SCN was duly served upon the appellant who despite opportunities failed to appear before the adjudicating officer.

ii. The appellant at the adjudicating stage has failed to provide documentary evidence in support of his contention that most of the work was carried out for Government of Sindh funded from Annual Development Programme (ADP) and during the tax periods involved the same were either exempted from payment of SST or liable for reduced rate of SST.

iii. The copy of OIO was duly served upon the appellant.

iv. The appeal was rightly dismissed for non-prosecution as the appellant despite 27 dates of hearing failed to proceed with the appeal and did not appear for hearing in response to final notice of hearing dated 26.11.2022.

The Commissioner (Appeals) rightly dismissed the appeal for non-prosecution.

08. The AC-SRB was directed to reconcile the matter keeping in view the contention of the appellant. The AC-SRB submitted the Reconciliation Statement dated 10.08.2023. According to the re-conciliation statement the SST payable was Rs.481,284/-. The learned ITP for the appellant signed the reconciliation statement and agreed to pay the said amount in three monthly installments and requested that the penalty and default surcharge may be waived as the elements of *mèns-rea*, willfulness and *mala-fide on the part of the appellant are lacking*.



09. In view of the acceptance of the appellant to pay SST of Rs.481,284/= the appeal is partly allowed. The OIO and OIA are maintained to the extent of payment of SST of Rs.481,284/= and setaside in respect of remaining amount.

10. The appellant is directed to deposit the payable SST in three equal monthly installment of Rs.160,428/= each. The first installment is payable on or before 20<sup>th</sup> August, 2023, the second installment is payable on or before 05<sup>th</sup> September, 2023 and the 3<sup>rd</sup> Installment is payable on or before 05<sup>th</sup> October, 2023. As far as the penalty and default surcharge is concern the penalty is waived in view of faulty order passed by the AO and maintained by Commissioner (Appeals), SRB. In view of concession of payment of SST in three installments the appellant is directed to deposit lump sum payment of Rs.18,719/- towards the payment of default surcharge to be deposited on or before 20<sup>th</sup> August, 2023. In case the amount is not deposited as stipulated above the appellant will also be liable to pay Rs.10,000/- for each default.

11. The appeal is disposed of in terms of para 10 above. The copy of the order be supplied to the learned representatives of the parties.

Karachi:

Dated: 11.08.2023

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, SRB, Mirpurkhas.

Copy for information to:-

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

*M. Adeem Siddiqi*  
(Justice® Nadeem Azhar Siddiqi)

CHAIRMAN

Certified to be True Copy

*[Signature]*  
16-08-2023

REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on 16-08-2023  
*[Signature]*  
Registrar

Order Dispatched on 16-08-2023  
*[Signature]*  
Registrar