

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE-BENCH-I

APPEAL NO. AT-88/2023

M/s Ajmer Engineering Works (Pvt.) Ltd.
(SNTN: S3361373-7)
Office No.5 & 6, Block-A, Al-Rahim, Centre,
Sarfaraz Road, Hyderabad..... Appellant

Versus

Assistant Commissioner (Unit-34),
Sindh Revenue Board (SRB),
Bungalow, No. 14-A/1,
Defense Housing Society, Phase-I,
Cantt. Hyderabad. Respondent

Date of filing of appeal: 22.06.2023

Date of hearing: 17.08.2023

Date of Order: 18.08.2023

Mr. Jan Alam, Advocate for the appellant.

Ms. Humaira Shakeel, AC-SRB Hyderabad for respondent.

ORDER

Justice® Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order dated 06.06.2023 passed by the Commissioner (Appeals) in Appeal No.83/2023 under section 58 (4) of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) granting conditional stay on deposit of 25% of the tax involved.

02. The facts as stated in the OIO are that the appellant having SNTN: S3361373-7, is registered with SRB under the principal activity of *Contractor of*

nos.

Building, classified under Tariff Heading 9814.2000 of the Second Schedule to the Act and are chargeable to Sindh Sales Tax (SST).

03. It was alleged in the SCN that as per information available with the Department including the Bid Evaluation Report, it was revealed that the M/s Hyderabad Electric Supply Company (HESCO) has awarded tender to the appellant for providing taxable services amounting to gross amount of Rs.248,160,000/- which involved SST of Rs.28,538,400/- (as per fraction formula). Details are given below:-

Tender Inquiry No	Bid Opening Date	Value of Services	Rate	SST Amount	Total	Details of work/ Services
1666/22	22.03.2022	219,621,600	13%	28,538,400	248,160,000	Repair of Damaged Distribution Transformers

04. The appellant was served with a Show-Cause Notice dated 14.02.2023 to explain as to why the SST amounting to Rs.28,538,400/- should not be assessed under section 23(1) read with section 47(1A) of the Act alongwith default surcharge under section 44 of the Act and the penalties prescribed under Serial No.3 of the Table under section 43 of the Act for contravention of the provisions of the Act.

05. The department provided sufficient opportunities to the appellant to file reply and to appear for hearing, but neither the appellant filed reply nor attended the hearings.

06. The Assessing Officer (AO) passed OIO and determined SST at Rs.28,538,400/- alongwith default surcharge under section 44 of the Act and also imposed penalty of Rs.1,426,920/= under Serial No.3 of the Table under section 43 of the Act.

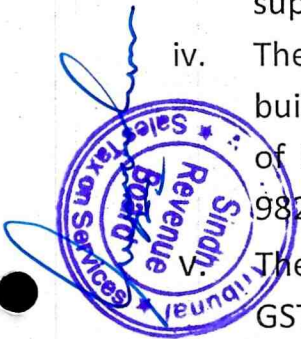


07. The appellant challenged the said OIO before Commissioner (Appeals), SRB under sub-section (1) of section 57 of the Act. The appellant also filed an application for staying the recovery of tax. The appeal alongwith stay application was taken up on 21.06.2023 and the Commissioner (Appeals) passed the following order:-

"Regarding stay, the appellant is advised to consider availing facility as per proviso to the section 66(1) of 2011-Act by deposit 25% amount of tax involved".

08. The learned advocate for the appellant submitted as under:-

- i. The appellant was never registered with the SRB and no SST can be levied on them prior to date of registration and refer to various Orders of Commissioner (Appeals), SRB and the Tribunal.
- ii. The mere filling of on line application for registration without the user ID and password could not be considered as valid registration.
- iii. The tender granted to the appellant was for toll manufacturing and supply of goods which is not a taxable service.
- iv. The SCN was issued invoking Tariff Heading 9814.2000 (contractor of building) whereas; the alleged services mentioned in the bid was Repair of Damaged Distribution Transformers not falling under Tariff Heading 9824.2000.
The appellant as per the contract with HESCO was required to pay 17% GST which was charged and withheld by the recipient and paid to F BR.
- vi. The Commissioner (Appeals), SRB instead of passing stay order on the basis of merit of the case has erroneously invoked first proviso to sub-section (1) of Section 66 of the Act, 2011.
- vii. The legislature has not imposed any condition under sub-section (4) of Section 58 of the Act and as such conditional order for depositing 25% of tax amount for grant of stay is not legal and proper.



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- viii. The OIO was passed on 11.05.2023 and thereafter the department vide letter dated 26.05.2023 directed the appellant to produce record and information.
- ix. The OIO was not served upon the appellant.
- x. The appellant apprehends coercive action for recovery of tax on the part of the appellant and submitted that in case the stay is not granted the Department will attach their bank account causing monetary loss as well as loss of reputation and requested for grant of stay against coercive recovery.

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

- i. The appellant got voluntarily registration with SRB on 12.03.2016 describing its services under Tariff heading 9814.2000.
- ii. The appellant deliberately failed to complete the required registration process due to which user ID and password was not issued to them.
- iii. The tender granted to the appellant was for repair of damaged distribution transformers falling under Tariff Heading 9809.0000 (contractual execution of work or furnishing supplies).
iv. The appellant was required to charge, collect and pay the SST to SRB. The payment if any made to FBR was neither proper nor legal and the appellant could not escape from its liability to pay SST. The order for grant of stay subject to deposit on 25% tax amount of was rightly passed to safeguard the interest of both the parties.
- vi. The Commissioner (Appeals) in appropriate cases can grant conditional stay.
- vii. The appellant to create deception is also functioning in another name i.e. M/s Ajmer Electric Engineering Works which is an Association of Persons (AOP) at the same address which creates doubt about the integrity of the appellant.
- viii. The information vide letter dated 26.05.2023 was called from the other concern (Ajmer Electric Engineering Works) of the appellant and not from the appellant, who is a private limited company.



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- ix. The OIO was properly served upon the appellant and the evidence will be placed before Commissioner Appeals), SRB.
- x. The appellant was provided several opportunities by the adjudication officer neither file reply nor appear for hearing before the adjudication officer.

10. We have heard the learned representatives of the parties and perused the record made available before us.

11. This appeal has been filed by the appellant against the order dated 18.04.2023 passed by the Commissioner (Appeals), SRB for granting conditional stay subject to deposit of 25% of the amount of tax involved.

12. This case appears to be a case of hardship. The appeal is still pending before Commissioner (Appeals) for want of hearing. The appellant has not deposited 25% of the amount of tax involved and filed this appeal. The appellant rightly apprehends coercive recovery on the part of SRB during the pendency of appeal if stay is not granted.

13. The Commissioner (Appeals), SRB on the first date of hearing instead of passing the stay order after considering the merits of the appeal invoked first proviso to sub-section (1) of section 66 of the Act and advised the appellant to deposit of 25% of the amount of tax involved.

14. From the submissions of the parties it appears that factual and legal controversies are involved and require serious consideration. The Commissioner (Appeals) is requires to resolve the issues of levying SST on the appellant before registration as well as the nature of services provided by appellant and whether the work performed by the appellant was liable to GST or SST.

15. The appeal is still pending and fixed for hearing. The passing of the conditional stay order on the first day of hearing without considering the merits of the appeal was apparently a harsh order. The legislature has not provided any

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condition under sub-section (4) of section 58 of the Act. However, in appropriate case the first proviso to sub-section (1) of section 66 of the Act can be invoked.

16. The instant appeal is only against the conditional stay order and no purpose will be served in keeping the same pending any further. We therefore, to foster cause of justice reduce the deposit of tax from 25% to 10% of the principal amount of tax and the appellant is directed to deposit 10% of the principal amount of Rs.2,853,840/- within two weeks from today. The stay is granted till the disposal of appeal by Commissioner (Appeals). However, in case 10% of the principal amount of tax is not deposited within two weeks the stay will stand vacated without any further order.

17. We, therefore direct the Commissioner (Appeals) to expeditiously proceed with the appeal and to decide the same within next forty five days from the date of this order without allowing unnecessary adjournments to the parties. The parties are directed to cooperate with the Commissioner (Appeals).

18. The appeal is disposed of as above. The copy of the order may be provided to the learned representatives of the parties.

Sd/-

(Syed Tahir Raza Zaidi)

Member Technical

Karachi

Dated: 18.08.2023

Copy for compliance:

1. The Appellant through authorized Representative.
2. The Assistant Commissioner (Unit-34), SRB, Hyderabad.
3. The Commissioner (Appeals-III), SRB, Karachi.

Copy for information to:-

- 3) All Commissioner (Appeals), SRB, Karachi.
- 4) Office copy
- 5) Guard file.

Sd/-

(Justice[®] Nadeem Azhar Siddiqi)

CHAIRMAN

Certified to be True Copy

[Signature]
18-08-2023

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

18-08-2023
Order Dispatched on

[Signature]
REGISTRAR

18-08-2023
Order Issued on
[Signature]
REGISTRAR