

BEFORE THE APPELATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

SB-1

APPEAL NO. AT-145/2015

M/s. Nudrat M. Khan & Co. CA.....Appellant

Versus

Commissioner (Appeals), SRB, Karachi.....Respondent

Date of hearing 21.03.2018

Date of Order 21.03.2018

Mr. Taj Muhammad, Representative for Appellant

Ms. Nida Noor, Assistant Commissioner, SRB for Respondent.

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal No.26/2015 dated 28.01.2015 passed by the Commissioner (Appeals) in Appeal NO. 155/2014 confirming the Order in Original No. 319/2014 dated 20.05.2014 passed by the Assistant Commissioner-8 (Ms. Uzma Ghory) SRB, Karachi.

The facts of the case as mentioned in the Order-in-Original are that the Appellant is a Chartered Accountant and is reported to be engaged in providing or rendering taxable service of Accountants and Auditors under Tariff heading 9815.3000 of the Second Schedule of the Sindh Sales Tax on Services Act, 2011 (herein after referred to as the Act of 2011) which is a taxable service w.e.f. 1st July, 2013.

2. It was further stated that the persons providing or rendering taxable services are required to be registered with SRB under section 24 of the Act.

3. It was alleged in the order in original that since the appellant failed to get e-register itself with SRB, a show-cause notice dated 21.02.2014 was

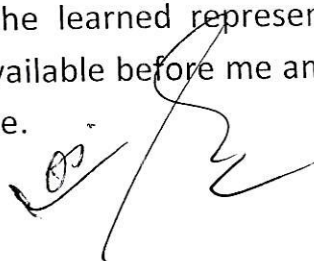


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issued, which was neither replied by the appellant nor did the appellant appear on date of hearing.

4. The Assessing Officer passed an ex-parte order for compulsory registration of Appellant under section 24B of the Act and imposed penalty of Rs.100,000/= under serial No.1 of the Table of section 43 of the Act. .
5. The said order of the Assessing Officer was challenged by respondent by way of filing appeal before the Commissioner Appeals, who dismissed the appeal. The appellant challenged the appellate order in this appeal.
6. The learned advocate for the appellant on 05.03.2018 produced the photo copy of the Registration Certificate issued by the respondent and submitted that the requirement of Compulsory Registration has been complied with and not only the tax returns were e filed from July, 2013 but the due tax was also deposited.
7. The learned Assistant Commissioner placed on record the Registration and Tax Profile of the appellant. She then submits that the appellant is a Chartered Accountant and before providing and rendering service is liable to get e-registration from SRB under section 24 of the Act of 2011 and on his failure to do so it is liable to be compulsorily registered under section 24 B of the Act of 2011 and to pay penalty of Rs.100,000/= which was rightly imposed. She further submitted the appellant got itself registered with SRB after passing of the order in original and during pendency of appeal before the Commissioner (Appeals) and confirmed that monthly tax returns were e-filed from July, 2013 and tax for few months were also deposited.

I have heard the learned representative of the parties, perused the record made available before me and considered the submissions of the made before me.



8. The first question is about the registration of appellant with SRB. The appellant is a Chartered Accountant and admittedly he is resident of Sindh and as per clause (a) of sub-section (1) of section 24 of the Act of 2011 registration is required for all persons who are residents. Since the appellant has failed to get registration under section 24 of the Act of 2011 the respondent has rightly registered the appellant invoking the provisions of section 24 (B) of the Act.
9. The appellant has produced Registration Certificate from which it is not clear whether the appellant obtained voluntary registration or it was compulsory registered as there is no such column in the registration certificate. The learned AC produced Tax Profile of the Appellant which say that the basis of Registration is Voluntary. Ms. Nida Noor submitted that after compulsory registration the appellant has changed the basis. I am failed to understand how the appellant can made changes in the registration profile. I also want to point out that in the Registration Certificate "Effective Date of Registration" is mentioned as 23/05/2014 (English style), whereas the "Date of Issue" is mentioned as 11/26/2014 (American Style). This is confusing. To avoid any confusion the SRB may adopt one style which suits them.



10. The second question is that the Assessing Officer while ordering compulsory registration of appellant merely considering that the Appellant is a Chartered Accountant imposed penalty of Rs. 100,000/ under clause-1 of table of Section 43 of the Act. The appellant has also challenged the imposition of maximum penalty of Rs.100,000/=. The provision provides that penalty can be imposed if any person who is required to apply for registration under this Act fails to make an application for registration before providing or rendering taxable services, such person is liable to pay penalty of Rs.10,000/- or five percent of the amount of Sales Tax. It was further provided that in case of non-compliance of compulsory registration the minimum penalty should be Rs. 100,000/-. It was not been discussed in the order in original that what are the compliance (requirement) of compulsory registration, which the appellant failed to comply. It was also not

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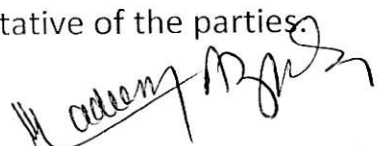
discussed in the order in original why maximum/higher penalty of Rs.100,000/= was imposed instead of minimum/lessor penalty of Rs.10,000/=. When two types of penalties are provided under law the Assessing Officer is duty bound to justify the imposition of maximum penalty. The two types of penalties are provided to cater different situations. It has not been discussed under which situation lessor penalty can be imposed and under what situation the maximum penalty can be imposed. It is an admitted position that the appellant after compulsory registration started discharging its liabilities.

11. In view of the above I am satisfied that both order-in-original and order-in-appeal to the extent of imposing maximum/higher penalty of Rs.100,000/= suffers from legal infirmities and are not tenable under law, consequently the appeal is partly allowed and both the Order-in-original and Order-in-Appeal are set-a-side to the extent of imposing maximum/higher penalty of Rs.100,000/=.

12. The appellant is required to pay penalty of Rs.10,000/= within fifteen days from the date of receipt of this order.

13. The appeal is disposed of in the above terms. The copy of the order may be provided to the learned representative of the parties.

Karachi.


(Justice[®] Nadeem Azhar Siddiqi)

Dated: 21.03.2018

CHAIRMAN

Copies supplied to:-

1. The Appellant through Authorized Representative.
2. The Assistant Commissioner, SRB, Karachi.

Copy for information to:-

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

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