

**BEFORE THE APPELATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI**

**SB-1**

**APPEAL NO. AT-82/2016**

M/s Haji Sultan Ahmad Katoo & Sons.....Appellant

**Versus**

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

Mr. Rehmat Ali Shaikh, Advocate for Appellant

Mr. Waleed Patoli, AC SRB for Respondent

Date of hearing 12.03.2018

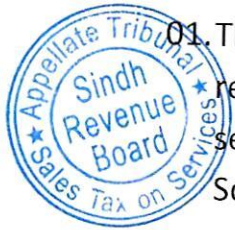
Date of Order 16.03.2018

**ORDER**

**Justice<sup>®</sup> Nadeem Azhar Siddiqi:** This appeal has been filed by the appellant challenging the Order-in-Appeal No.138/2016 dated 01.09.2016 passed by the Commissioner (Appeals) in Appeal NO. 111/2015 filed by the appellant against the order in original No. 133/2015 dated 02.01.2015 passed by the Deputy Commissioner (Mr.Syed Rizwan Ali) SRB, Karachi.

01. The facts as stated in the order-in-original are that the appellant is registered with SRB and is engaged in providing and rendering taxable services in Sindh classified under tariff heading 9809.0000 of the Second Schedule of Sindh Sales Tax on Services Act, 2011 (herein after referred to as the Act) subject to tax @ 15%.

02. It was alleged in the order-in-original that appellant failed to e-file monthly tax returns for the tax periods from December, 2013 to September, 2014.



*MOS*

03. A show-cause notice dated 04.12.2014 was served upon the appellant calling upon it to show-cause as to why penal action should not be taken against it. The appellant despite obtaining time to file monthly sales tax returns failed to file the same and has also failed to file its reply.
04. Finally the Assessing Officer passed order imposing penalty of Rs.65,000/= on account of non-filing of monthly sales tax returns under serial No.2 of Table under section 43 of the Act.
05. The Appellant challenged the Order-in-Original by way of filing appeal before the Commissioner (Appeals) who dismissed the appeal for non-prosecution. Hence the appellant filed this appeal.
06. Mr. Rehmat Ali advocate the learned representative of the appellant submitted that the Assessing Officer as well as Commissioner (Appeals) has failed to fulfill legal requirements before imposing penalty. He then submitted that both orders were passed ex-parte without proper hearing. He also challenged the show-cause notice and submitted that in the show cause-notice tax periods were mentioned as December, 2013 to November, 2014, whereas in the order in original the tax periods were mentioned as December 2013 to September 2014. He further submitted that the appellant is ready to file returns within reasonable time and request that penalty imposed may be waived as the appellant is a poor person.
07. Mr. Waleed Patoli the learned Ac for respondent submitted that penalty for non-filing of returns was properly imposed as the appellant despite opportunities failed to e-file monthly tax returns. He then submitted that even after issuance of show-cause notice, passing of order in original and order in appeal the appellant has failed to e-file monthly tax returns. He then submitted that the order in original was passed on the basis of show-cause notice dated 04.12.2014, whereas Mr. Rehmat Ali is referring to other show-cause notice dated 05.01.2015. He then submitted that till date returns have not been filed and the statement of



*Handwritten signature/initials in blue ink, possibly "Mas" or similar.*

learned counsel that the appellant is ready to file returns is amounts to admission.

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

08. The appellant is a registered person having SNTN No. S1293494-1 and is engaged in providing or rendering taxable service under Tariff heading 9809.0000 (services provided or rendered by persons engaged in contractual execution of work or furnishing supplies) of the Second Schedule of The Act, 2011, which is subject to tax @ 15%. As per section 30 (1) of the act every registered person is required to furnish true and correct tax return in prescribed form. Admittedly the appellant despite opportunities had not e-filed tax returns for the tax periods from December, 2013 to September, 2014.

09. Non-filing of monthly tax returns is an offence under the Act of 2011 and the person who fails to furnish returns is liable to pay penalty as prescribed under serial No.2 of Table of Section 43 of the Act. The penalty for the tax periods from December, 2013 to June, 2014 was Rs.5,000/= per month, whereas the penalty for the tax periods from July, 2014 to September, 2014 is Rs.10,000/= per month. The Assessing officer has rightly imposed Rs.65,000/= as penalty for non-filing of returns.



10. From the record it is apparent that sufficient opportunity has provided to the appellant to explain why monthly tax returns were not e-filed, but the appellant failed to avail the same. Now the appellant cannot blame others for its own negligence or indolence. The learned Assessing Officer had 11.12.2014, 17.12.2014 and 12.01.2015 for compliance but despite requesting for time the appellant has not made compliance and returns were not filed. The learned Commissioner (Appeals) in the order in appeal stated that the appeal was fixed for 14 times and the AR of the appellant sought adjournments and before passing the order in appeal two final notices dated 11.07.2016 and 01.09.2016 were served but to


A handwritten signature in blue ink, appearing to be "M. O. S.", written over the end of the text in paragraph 10.

no avail. The appellant despite obtaining adjournment on 11.07.2016 failed to appear on the subsequent date.

11. As far as the ground that the tax periods mentioned in the show-cause notice and order in original is different is concerned it appears that the order in original was passed on the basis of show-cause notice dated 04.12.2014 in which the tax periods were mentioned from December, 2013 to August, 2014, whereas in the order in original the tax periods were mentioned from December, 2013 to September, 2014. The penalty over and above the tax periods mentioned in the show-cause notice cannot be legally imposed. The appellant has referred to show-cause notice dated 05.01.2015 which was not the subject matter of order in original dated 21.01.2015. The order in original was passed on the basis of show-cause notice dated 04.12.2014.

12. In view of the above discussion this appeal is partly allowed. The order in original and order in appeal is modified to the extent that the appellant is not liable to pay the penalty for the tax period of September, 2014 amounting to Rs.10,000/=. The appellant is only liable to pay Rs.55,000/= on account of penalty for not filing e-returns.

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

  
(Justice (R) Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi

Dated: 16.03.2018

**Copies Supplied to:**

- 1) The Respondent through Authorized Representative.
- 2) The Assistant Commissioner SRB, Karachi.

**Copy for Information**

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

Certified to be True Copy

  
**REGISTRAR**  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD