

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

SB-1

APPEAL NO. AT-83/2016

M/s Friends Marriage Lawn.....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 19.03.2018

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal No.136/2016 dated 01.09.2016 passed by the Commissioner (Appeals) in Appeal No. 112/2015 filed by the appellant against the order in original No. 53/2014 dated 29.10.2014 passed by the Assistant Commissioner (Mr.Nasir Bachani) SRB, Karachi.

01. The facts as stated in the order-in-original are that the appellant having NTN No. S2501943-7 is engaged in providing and rendering taxable services falling under tariff heading 9801.3000 of the Second Schedule of Sindh Sales Tax on Services Act, 2011 (herein after referred to as the Act) chargeable to Sindh Sales Tax @ 16% (15% effective 1st July, 2014).

02. It was alleged in the order-in-original that appellant was served with a notice dated 27.08.2013 followed by a reminder dated 06.09.2013

Handwritten signature and initials

asking for registration, failing which the appellant will be compulsorily registered.

03. It appears that the appellant despite opportunities failed to file its reply.
04. Finally the Assessing Officer passed order of compulsory registration of the appellant imposing penalty of Rs.100,000/= under serial No.1 of Table under section 43 of the Act. The Assessing Officer also imposed penalty of Rs.10,000/= or 5% of the tax involved when true or correct returns are filed with SRB.
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 the learned advocate for 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.
07. Mr. Rehmat Ali Shaikh Advocate further submitted that appellant is member of Sindh Marriage Hall and Lawn Welfare Association who had filed petition No.2445/2015 before the Honorable High Court in which SRB was restrained from taking any coercive action against the appellant. He then submitted that since petition is pending the order of registration and imposing penalty is not proper and the appellant is neither liable for registration nor liable to pay penalty of Rs.100,000/-.
08. Mr. Waleed Patoli the learned AC for respondent refer to tariff heading 9801.3000 and submitted that since July 2013 the service of Marriage Halls and Lawns are taxable and liable to be charged to tax at statutory rate and failure of appellant to apply for voluntarily registration the department has rightly compulsorily registered it and imposed penalty for non-registration.



[Handwritten signature]

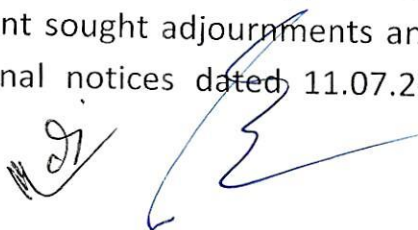
09. Mr. Waleed further submitted that even after issuance of show-cause notice, passing of order in original and order in appeal the appellant has failed to complete the requirements of compulsory registration.

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

10. It is an admitted position that the appellant is engaged in providing and rendering taxable services falling under tariff heading 9801.3000 (Services provided or rendered by marriage halls and lawns) of the Second Schedule of Sindh Sales Tax on Services Act, 2011 chargeable to Sindh Sales Tax @ 16% (15% effective 1st July, 2014).

11. Section 24 of the Act, 2011 provides that registration will be required for all persons who are resident; provide any of the services listed in the second schedule from their registered office or place of business in Sindh. Section 24B of the Act, 2011 deals with compulsory registration and provides that if a person required to be registered under this Act has not applied for registration, the officer of the SRB shall, after such inquiry as he may deem fit, register the person through an order to be issued in writing and such person shall be deemed to have registered from the date he became liable to registration. Admittedly the appellant is providing taxable service of marriage hall and lawns which is part of Second Schedule of the Act and is liable for registration. The Officer SRB has rightly registered the appellant after issuing notice and after providing proper right of hearing.

12. From the record it is apparent that sufficient opportunity has provided to the appellant to apply for voluntarily registration but the appellant failed to avail the same. Now the appellant cannot blame others for its own negligence or indolence. The learned Commissioner (Appeals) in the order in appeal stated that the appeal was fixed for 13 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

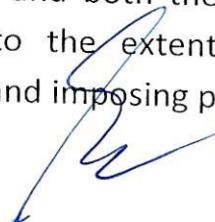



served but to no avail. The appellant despite obtaining adjournment on 11.07.2016 failed to appear on the subsequent date.

13. As far as the penalties are concerned, the Assessing Officer had imposed maximum penalty of Rs.100,000/ under clause-1 of Table of Section 43 of the Act. 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 has not been discussed in the order in original that why maximum/higher penalty was imposed instead of minimum/lessor penalty. 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. The appellant is only liable to pay penalty of Rs.10,000/= only.

14. The Assessing Officer has also imposed penalty of Rs.10,000/= or 5% of the tax involved (when true or correct returns are filed with SRB). This penalty is totally illegal and has been imposed without assessing tax. The imposition of this type of penalty is linked with tax and can only be imposed if the Assessing Officer has determined the tax liability. Since no tax liability was determined by the Assessing Officer this penalty is set aside.

15. 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 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/= and imposing penalty of 5% of the tax involved.



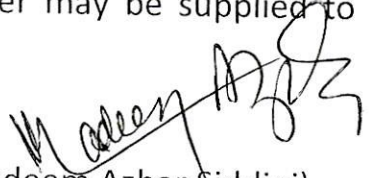
16. The appellant is requires to pay penalty of Rs.10,000/=.

17. As far as filing of the petition before the Honorable High Court and obtaining interim order against the department not to take any coercive action is concerned, the appellant has only placed on record order dated 11.05.2015 which says that till next date the respondents are restrained from taking any coercive action against the petitioner. It is pertinent to mention here that the petition was filed by Sindh Marriage Halls and Lawns Association and except order dated 11.05.2015 the appellant failed to produce any other order by which the said order was extended.

18. 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 only liable to pay the penalty of Rs.10,000/= for non-registration.

19. The implementation of this order is subject to the decision of the Honorable High Court in CP NO. D-2545/2015. It is clarified that till decision of the Honorable High Court no coercive action for recovery is to be initiated against the appellant.

20. 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: 19.03.2018

Copies Supplied to:

- 1) The appellant 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