

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

SB-1

APPEAL NO. AT-86/2016

M/s Shehnai Marriage Garden.....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<sup>®</sup> Nadeem Azhar Siddiqi:** This appeal has been filed by the appellant challenging the Order-in-Appeal No.139/2016 dated 01.09.2016 passed by the Commissioner (Appeals) in Appeal No. 114/2015 filed by the appellant against the order in original No. 94/2015 dated 04.04.2015 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 SNTN No. S1504147-6 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 1<sup>st</sup> July, 2014).

02.It was alleged in the order-in-original that during scrutiny of tax returns profile of the appellant revealed that appellant failed to make payment of the tax for the tax periods from July, 2013 to December, 2014 and also failed to e-file monthly tax returns for the said periods.



*Nasir*

A handwritten signature in blue ink, appearing to be "Nasir", written over the text of paragraph 02.

03. A show-cause notice dated 28.01.2015 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 opportunities failed to file its reply.
04. Finally the Assessing Officer passed order imposing penalty of Rs.180,000/= on account of non-filing of monthly sales tax returns for the tax periods from July, 2013 to December, 2014 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 for the appellant states 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 states that appellant is member of Sindh Marriage Hall and Lawn Welfare Association who had filed petition No.2445/2015 before the Honorable High Court of Sindh in which SRB was restrained from taking any coercive action against the appellant. He then submitted that since petition is pending the order of imposing penalty for not filing returns is not proper and the appellant is neither liable to file returns nor liable to pay penalty of Rs180,000/= for non-filing of monthly tax returns.
08. He further submitted that the appellant is ready to file returns within reasonable time subject to decision of the petition.
09. Mr. Waleed Patoli the learned AC 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 tax at statutory rate and the penalty for non-filing monthly tax returns was rightly imposed.



*Handwritten signatures and initials.*



10. Mr. Waleed Patoli further 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.

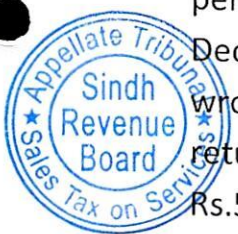
I have heard the learned representative of the parties and perused the record made available before us.

11. The appellant is registered person having SNTN No. S1504147-6 and 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 1<sup>st</sup> July, 2014).

12. As per section 30 (1) of the act every registered person is required to furnish true and correct return in prescribed form. Admittedly the appellant despite opportunities had not e-filed tax returns for the tax periods involved in this appeal.

13. 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 July, 2013 to June, 2013 was Rs.5,000/= per month, whereas the penalty for the tax periods from July 2014 to December, 2014 is Rs.10,000/= per month. The Assessing officer has wrongly imposed penalty of Rs.180,000/-. The penalty for non-filing of returns for the tax periods from July, 2013 to June, 2014 at the rate of Rs.5,000/= comes to Rs.60,000/= and penalty for the tax periods from July, 2014 to December 2014 at the rate of Rs.10,000/= comes to Rs.60,000/= making a total of Rs.120,000/=.

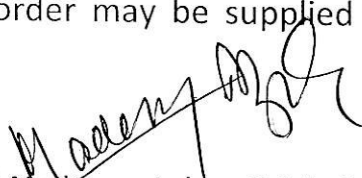
14. From the record it is apparent that sufficient opportunity has provided to the appellant to explain why monthly tax returns were not e-filed, but the appellant failed to avail the same. Now the appellant cannot blame others for its own negligence or indolence. The learned Commissioner (Appeals) in the order in appeal stated that the appeal was fixed for 13



*[Handwritten signature]*

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.

15. 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.
16. 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.120,000/= for non-filing of returns for the periods from July, 2013 to December, 2014.
17. 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.
18. 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

**Certified to be True Copy**

Copies Supplied to:

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

  
**REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD**

Copy for Information

3) The Commissioner (Appeals), SRB.

4) Guard File.

5) Office File.

