

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

APPEAL NO. AT-41/2017

M/s Fauji Akbar Portia Marine Terminals Ltd. Appellant

Versus

1. Commissioner (Appeals), SRB, Karachi
2. Assistant Commissioner SRB, Karachi Respondents

Mr. Muhammad Tarique, ITP For the Appellant

Mr. Aamir Ali, Deputy Commissioner, SRB and
Ms. Anum Shaikh, Assistant Commissioner, SRB, Karachi For the Respondents

Date of hearing 05.12.2017

Date of Order 12.02.2018

ORDER

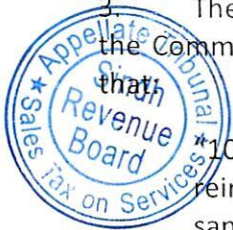
Razia Sultana Taher: This appeal has been filed by the Appellant challenging the order in appeal No.61/2017 dated 15th May, 2017 passed by the Commissioner (Appeals) on ground that Commissioner (Appeals) failed to hold that the order passed by the Assessing Officer / Respondent No.2 was time barred and also failed to hold that the assessing officer / respondent No.2 erred in invoking Section 47(1A) of the Sindh Sales Tax on Services Act, 2011.

2. The concerned Assistant Commissioner in the order in original No.868 of 2016 dated 28th November, 2016 observed and concluded that the appellant / registered person had deliberately and wilfully evaded government revenue in respect to (i) penalty for delay (ii) NOC charges and (iii) Reimbursement of expenses. The appellant was ordered to pay Sindh Sales Tax, penalty and default surcharge.

3. The said order of the assessing officer was challenged by way of filing of appeal before the Commissioner (Appeals), SRB who at paragraphs 10 and 11 of the order in appeal stated that

*10. For the given reasons the order in appeal is upheld to the extent of tax on the reimbursement of Labour Charges and the default surcharge thereon. Whereas, the same is set aside to the extent of remaining amount of tax on the "penalty for delay" and the "NOC Charges".

11. As far as the penalties are concerned it will be seen that the reasons above written have enabled me to set aside most part of the OIO and yet the element of



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“reimbursement of labour charges” needed a through interpretation as the nature of transaction was misleading. Therefore, to my humble view there do not exist mens rea / malafides on the part of the Appellant and thus the penalty on the remaining amounts is set aside as well. Order accordingly.”

4. During the course of hearing before the Appellate Tribunal, Mr. Muhammad Tarique ITP the appellant’s counsel submitted that the present appeal case involves two issues. Firstly, the order in original is time barred. The show cause notice was issued on 11.05.2016 and order in original was passed in 202 days, beyond the prescribed limit of 120 days. The appellant submitted that the order in original stated that 60 days time was extended under Section 23 of the SSToS Act, 2011 and it further stated that the appellant had taken 15 days time and referred to paragraph 14 of the order in original, therefore it is time barred.

The 2nd issue is that the respondent while issuing the order in original invoked section 47(1A) which deals in tax fraud. There is no element of tax fraud, hence the same was mistakenly invoked by the respondent. In counter arguments to the reply of the respondent, Mr. Tarique submitted that the assessing officer had written 15 days as against 40 days and the appellant had only availed 15 days time when seeking adjournments. Next, he added courier shipment shows that the letter of respondent was serviced on 19.05.2017 and the hearing was fixed on 18.05.2017 the hearing notice was received late. The booking date is 18.05.2017, it speaks of malafide intention to fix the hearing date on the same date. The appellant in his counter arguments submitted that their letter dated 19.05.2016 is not an adjournment application. That letter / application dated 03.06.2016 is also not an adjournment application and Annexure ‘t’ dated 21.06.2016 is again not an adjournment application. According to the appellant’s representative record – the appellant had sought 9 days adjournment and paragraph 14 of the order in original shows 15 days whereas, the respondent during hearing and in reply submitted that 40 days adjournment was sought by the appellant. The same is unwarranted and mere non-deposit of tax is not tax fraud.

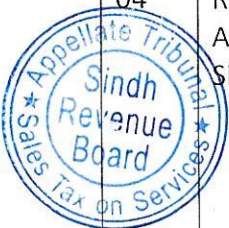
5. The respondent represented by Ms. Anum Assistant Commissioner submitted that the assessment order had been passed within the prescribed time limit given under section 23(3) of and section 23(4) the SSToS Act, 2011 – the assessing officer had taken 60 days extension on file with suitable reasons. The appellant had sought 40 days extension and request of extension was granted under section 23(4) of the SSToS Act, 2011. The respondent further submitted that the total time available to the assessing officer is 220 days i.e. 120+60+40 and accordingly the last date to pass the order was 17.12.2016. Whereas, the order in original was passed on 28.11.2016 which stands well before the expiry of time. The law was changed in July 2014 and the instant case was decided in 202 days. The respondent Assistant Commissioner added that the appellant was issued show cause notice under section 47(1A), as the appellant had deliberately not paid Sindh Sales tax amount despite providing taxable services which are liable to SST under the provision of Section 2(98) of the SSToS Act, 2011, and despite sufficient opportunities having been provided to the appellant to make the payment of SST amount the same was not paid. Ms. Anum further argued that all the adjournments application of the appellant are in writing and are available on record of the file.



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6. We have heard the learned representatives of both sides and perused the record of letters / applications available on original file of the department sent by the appellant to the assessing officer. The chronology of the letters sent to the respondent / department is tabulated as under:

S #	Letter No. and date	Contents
01	Ref:AM/SRB/10053/16 dated 19-may-2016 addressed to Mr. Kaleemullah Siddiqui	Reference to SCN serviced on 19 th May, 2016. That captioned notice dated 11 th May, 2016 for courier on the compliance date i.e.18 th May, 2016. A copy of courier tracking enclosed – request allow extension in time upto 31 st May, 2016.
	AC Unit-16: Hearing notice No:SRB-Com-III/AC-16/TO/2016/61960 dated 21 st May, 2016	Stating that, "Compliance to be made by 27 th May, 2016 positively. Please note that in case no one appears for hearing.....proceedings conducted exparte.
02	Ref:AM/SRB/10053/16 dated 27 th May 2016 addressed to Mr. Kaleemullah Siddiqui	Stating that "your office fixed the hearing time on 27 th May, 2016 and the Manager Mr. Muhammad Tarique is out of town". "Kindly fix the aforesaid heading on 31 st May, 2016 or any other date".
03	Ref:AM/SRB/10158/16 dated 31 st May, 2016 addressed to Mr. Kaleemullah Siddiqui	"in this connection we would apprise you that the reply of the aforesaid SCN is under preparation. Therefore, we would request you to kindly allow short extension in time upto 3 June, 2016 so that compliance of your aforesaid notice may be made in a satisfactorily manner".
	Department Hearing Notice No.SRB-Com-III/AC-16/TO/2016 dated 31.05.2016	Hearing in this case was fixed on 18.05.2016 and 27.05.2016. But M/s United International failed to appear. "Next hearing is fixed on 7 th June, 2016".
04	Ref:AM/SRB/10186/16 dated 3 June 2016 Appellant sent reply to Mr. Kaleemullah Siddiqui but did not appear in person.	"we hope that above factual and legal position would suffice your requirement. Therefore we would request you to kindly withdraw your aforesaid SCN under intimation to the company. <u>However we shall be pleased to furnish any further information we request you to provide us time for a meeting so that the detailed legal and factual position alongwith ancillary explanations may be provided to your satisfaction.</u>



	Respondent Final hearing notice No.SRB-Com-III/AC/TO/2016/166522 dated 9 th June, 2016	Hearing in this case was fixed on 7 th June, 2016 but M/s FAP failed to appear". Hearing is refixed on 13 th June, 2016".
05	Appellant's reply: Ref:AM/SRB/10251/16 dated 15 th June, 2016 Mr. Kaleemullah Siddiqui, Assistant Commissioner	We refer to hearing held on 13 th June, 2016 "During the course of aforesaid hearing, the company has required additional documentary evidences. In this regard we would apprise you that the company is process of gathering the required evidences. <u>Therefore we would request to please allow extension in time upto 18th June, 2016.</u>
06.	Ref:AM/SRb/10300/16 21 st June, 2016 addressed to Mr. Kaleemullah Siddiqui, AC	"We hope that above factual and legal position would suffice your requirement. Therefore we would request you to kindly withdraw your aforesaid SCN under intimation to the company. However we shall also be pleased to furnish information. <u>We request you to provide us time for a meeting so that the detailed legal and factual position alongwith ancillary explanations may be provided to your satisfaction</u> ".
	Respondent's Last hearing notice No.SRB-Com-III/AC-16/TO/2016/71038 dated 15 th July, 2016	"In the last para of your letter you have requested for time for meeting for detailed discussion of legal and factual position alongwith ancillary explanations". Hearing is refixed on 21 st July, 2016.
07.	Appellant's letter: Ref:AM/SRB/10416/16 dated 21 st July, 2016 addressed to Commissioner-III	Made reference to show cause notice. "We would request to <u>please grant us time for meeting so we may discuss related position pertaining to subject issue.</u> We shall be highly obliged to you if such meeting is fixed by your preferably early next week".



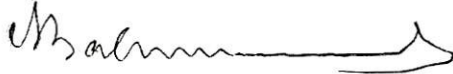
7. The preceding paragraph showing reproduced contents of the letters are self speaking. Furthermore, the record of the original file notesheet shows that the Assistant Commissioner (Unit-16) on date 05.09.2016 had taken 60 days time under section 23(3) of the SSToS Act, 2011 and the said note also states that time was sought for "complete investigation of the case". With the available record in the background, the appellant's contention that only 9 days adjournment had been sought is not factually correct. Even taking the argument of the appellant, that the Assessing Officer at paragraph 14 of the order in original stated that 15 days

time was sought by the appellant stands proved otherwise. From the letters seeking adjournments as available on record which certainty cannot be disregarded and appellant has not been able to dispel the contents of the letters seeking time from the respondent. We find no substantive reason as to why weightage to the letters addressed to the Assistant Commissioner seeking / requesting adjournments is not to be taken into consideration.

The hearing fixed on 18.05.2016 vide notice dated 21st May, 2016 by the Assistant Commissioner was refixed on 27.05.2016. Thus even if the number of days from 19th May, 2016 to 26.05.2016 are excluded, the same would come to 32 days adjournments on the part of the appellant. When the total number of 32 days adjournments sought are added to 120+60 days it comes to 212 days and the order in original was passed in 202 days. Hence we do not find any force in the argument of the appellant's counsel that the order in original was time barred.

8. In view of the aforementioned discussion, we hold that the order in original passed by the assessing officer was within the prescribed time limit and was not time barred.

9. The appeal stands rejected and disposed of accordingly.



(Muhammad Ashfaq Balouch)
JUDICIAL MEMBER



(Razia Sultana Taher)
TECHNICAL MEMBER

Karachi

Dated:14.02.2018

Certified to be True Copy

Copies supplied for compliance:-

1. The Appellant through authorized Representative.
2. The Assistant Commissioner (Unit-), SRB, Karachi.

Copy for information to :-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) The Deputy Commissioner (Legal), SRB, Karachi.
- 5) Office Copy.
- ✓ 6) Guard File.



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APPELLATE TRIBUNAL
SINDH REVENUE BOARD