

**BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD**

**Appeal No.AT-61/2017**

Assistant Commissioner, Sindh Revenue Board ..... Appellant

VERSUS

M/s Soneri Bank Limited ..... Respondent

Ms. Nida Noor, Assistant Commissioner, SRB, Karachi ..... For the Appellant

Mr. Mansoor Baig, Advocate ..... For the Respondent

Date of hearing 13.02.2018  
Date of Order 19.02.2018

**ORDER**

**Ms. Razia Sultana Taher:** This appeal has been filed by the appellant challenging the order in appeal No.88/2017 dated 4<sup>th</sup> July, 2017 passed by the Commissioner (Appeals) in appeal No.26/2017. The said order in appeal at paragraph 12 reads as "For the given reasons, the order in original is set aside and the appellant is discharged from the liability created".

2. The concerned Assistant Commissioner in the order in original No.43 of 2017 dated 01.03.2017 stated that the registered person had failed to respond to the recovery notice issued under section 66 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as SSToS Act, 2011) of the department. In order to effect recovery of the adjudged amount, the Assistant Commissioner issued legal notice No.SRB.Com-I/AC-6/MANG/SE/2015/0020880 dated 06.12.2016 addressed to Branch Manager, M/s Soneri Bank Limited. The said notice was issued under section 66(i)(b) and 66(i)(c) of the SSToS Act, 2011 and was received on 08.12.2016 at 12:33 p.m. as per the record (tracking No.30070815461). The Branch Manager was required to attach business bank account No.0208-0199550 of the registered person with immediate effect and to deposit the payment to the Government of Sindh's Head immediately. The Branch Manager vide their letter received on 9<sup>th</sup> December, 2016 submitted payorder of Rs.50903/28 in favor of Sindh Revenue Board.

3. The Assistant Commissioner in the said order in original held that the Branch Manager had failed to comply with the Notice No.SRB-Com-I/AC-6/MAWG/SE/2015/0020880 dated 6<sup>th</sup> December, 2016 and statutory Sections invoked



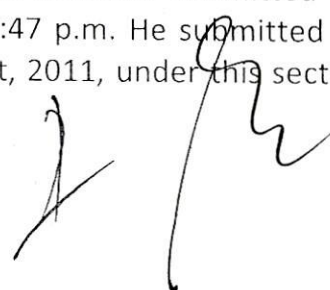
A large, stylized handwritten signature in black ink, located at the bottom right of the page, overlapping the text of the third paragraph and the page number.

therein within the stipulated time. Further the TCS record showed that the letter was received at 12:33 p.m. on 08.12.2016 and the transaction was made at 01:04 p.m. There is no cogent reason with the Branch Manager except the picture captured at 12:47 p.m. Thus the transfer of the amount to the sister concern clearly shows that the Bank Manager delayed in compliance of the Notice issued by the SRB Department. The Assistant Commissioner ordered that the charges contained in the show cause notice are established and imposed a penalty of Rs.84,958,964/- under the provision of Section 43(9)(b) of the SSToS Act, 2011 for contravention of Section 66(1)(b) & 66(1)(c) of the SSToS Act, 2011.

4. The said order of the assessing officer was challenged by way of filing of appeal before the Commissioner (Appeals) SRB. The order in appeal set aside the order in original and paragraph 12 of the same read: "12. For the given reasons, the OIO is set aside and the appellant is discharged from the liability created".

5. During the course of hearing Ms. Nida submitted that the respondent maintained account in its branch of M/s Socio Engineering Consultants, a management consultant who had failed to deposit the amount of Sindh Sales Tax amount of Rs.20,721,699/- along with the amount of default surcharge and penalty amounting to Rs.21,757,783/-. The bank under section 66 of the SSToS Act, 2011 was required to attach the said account immediately and deposit the amount of SST through Bank draft / pay order / cheque. She further submitted that in this regard the tracking results received from TCS showed that the shipment was delivered at 12:33 p.m. as against the respondent's version that the letter was received at 12:47 p.m. The transaction was made at 01:04 p.m. The appellant argued that the respondent stated that the bank manager had not seen the letter upto 01:04 p.m. and the bank manager had approved the transaction at 01:11 p.m. Had the bank manager not given the approval, the cheque would not have been cleared and this explains the reason for imposing penalty upon the respondent. The appellant further argued that the amount was transferred to the business bank account of M/s Kashmir Pre Engineering Construction (Pvt.) Ltd. from the business bank account of M/s Socio Engineering Consultant. It is pertinent to mention that the owner of M/s Socio Engineering Consultant is the major share holder in M/s Kashmir Pre Engineering Construction (Pvt.) Ltd. The cheque was signed on 08.12.2016 and no details of the transaction have been shown to the Sindh Revenue Board. The receipt of the amount has shown 'Null' Sales tax return which is evident that no business activity had been performed during that period and the respondent had also not shown any amount against M/s Kashmir Pre Engineering (Pvt.) Ltd.

6. The Respondent's advocate Mr. Mansoor submitted that the letter of TCS was received at M/s Soneri Bank time 12:47 p.m. He submitted that penalty was imposed under section 43(9b) of the SSToS Act, 2011, under this section the amount which was



recoverable as penalty should be double the amount of tax sought to be recovered or Rupees One Lac whichever is higher. The show cause notice shows an amount of Rs.42,479,482/-. The advocate submitted that the disputed amount in the instant case is Rs.4,440,000/- and if the penalty is to be imposed it should have been double the amount of Rs.4,440,000/- and not Rs.42,479,482/- and the appellant / department should restrict to the grounds taken in appeal. The respondent's advocate argued that the notice of attachment was issued on 06.12.2016 and it was received on 08.12.2016, there is a gap of two days and it was received at 12:47 p.m. The said notice dated 06.12.2016 for attachment addressed to Branch Manager and a copy of the same was also endorsed to M/s Socio Engineering Consultant H#137/III, Khayaban-e-Ghazi, DHA, Phase -IV, Karachi.

The defaulter requested for transfer of the amount from one business account to another business account, the time of transfer is shown 01:04 p.m. and the authorization was given at 01:11 p.m. The notice / letter of the appellant / department dated 08.12.2016 was received at 12:47 p.m. The contention of the Appellant that it was the connivance of the bank with the account holder, there is a difference of 17 minutes, the possibility of connivance is not possible as the notice received at 12:47 p.m. was not opened till the transaction was completed. The notice of the department does not indicate that it is 'urgent' or 'confidential' on the envelope. The notice of the appellant was opened subsequently / later and the transaction had already taken place. There is no malafide intention on the part of respondent and bank cannot think of default of Government notices of attachment.

7. Ms. Nida Assistant Commissioner, in counter reply submitted that the TCS online tracking record clearly states that the notice was received at 12:33 p.m. and not at 12:47 p.m. and the same is signed by one Mr. Farooq. Secondly, respondent has submitted that the notice was received at 12:47 p.m. and the envelope containing the notice was opened subsequent to the authorization of transfer. But, at paragraph 5 of the parawise reply submitted to the Tribunal, the respondent had submitted that notice of the appellant had remained unseen up til 01:04 p.m. In reply to the contention raised by the respondent that copy was endorsed to the M/s Socio Engineering Consultant, the appellant stated whether or not the copy of the said letter / notice was sent to M/s Socio Engineering Consultant the original despatch register would be shown to the Tribunal.

We have heard the learned representatives of both sides and seen the tracking result(s) submitted by the appellant and also seen the CCTV footage shown to us during the course of hearing by the Respondent's advocate. The appellant has placed reliance on the tracking Result(s) showing "date and time 12.08.2016 as delivered on 12:33 p.m. signed by Farooq". The respondent's Advocate showed the CCTV footage, it is dated

08.12.2016 and the time is shown as 12:47 p.m., when the TCS rider is seen entering and delivering mail but whether the mail being delivered is "Notice sent to the Bank, the same cannot be identified". The respondent advocate presented an envelope addressed to the Branch Manager, the same did not show that it was 'urgent / immediate' nor any evidence to the said effect have been provided by the appellant to the Tribunal. The appellant has submitted photocopy of M/s Soneri Bank Limited Core reports (Final Proof List (filtered) Reporting Criteria) showing the time (which is barely legible). The respondent has not denied the time of transfer 01:04 p.m. and that authorization was given at 01:11 p.m. on 08.12.2016. It is not out of context to add here that, the appellant has not to-date produced the despatch register to show whether the Notice was endorsed to the company or not.

The bottom line remains that there is no record / evidence to show the definite time when the envelope containing the notice of the appellant / SRB department was opened by the concerned person or the Branch Manager. We see that the notice is dated 06.12.2016 showing receipt on 08 December 2016 but there is no apparent indication on the envelop to show that it is 'immediate / urgent'. Thus, in absence of any substantive evidence on record, the existence of malafides / mens rea cannot be established against the respondent with a reasonable certainty.

9. In view of the above discussion, the order of Commissioner (Appeals) is upheld and the appeal is dismissed.



(Muhammad Ashfaq Balouch)  
JUDICIAL MEMBER



(Razia Sultana Taher)  
TECHNICAL MEMBER

19/2/18

Karachi

Dated:19.02.2018

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.

Certified to be True Copy



REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD