

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO.AT-03/2018

M/s Polizia Security Consultant (Pvt.) Limited Appellant

Versus

Assistant Commissioner, SRB, Karachi Respondent

Mr. Shukrullah, Advocate for the Appellant

Mr. Zaheer Hussain, Assistant Commissioner, SRB for the Respondent

Date of hearing 22.03.2018

Date of Order 27.03.2018

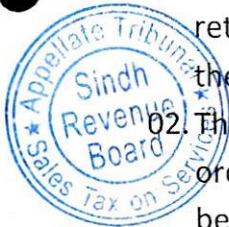
ORDER

Mr. Agha Kafeel Barik: This appeal has been filed against order of Commissioner (Appeals) dated 23.01.2018 whereby he upheld the order-in-original dated 05.07.2017 passed by Assistant Commissioner-Unit 06, SRB. (Mr. Zaheer Hussain) under sections 17, 30 and 43 imposing penalty of 5,921,327/-. The facts of the case, briefly are as under:

01. The appellant is providing security services classified under tariff heading 9818.1000 and got voluntarily registered on 30.12.2014 as such. However, it failed to file any return of Sindh Sales Tax till a show cause notice was issued by the Assistant Commissioner, SRB on 08.05.2017. As the appellant failed either to appear before the Assistant Commissioner, SRB or to reply to the show cause notice, the officer concerned passed order under section 43 (2) for not filing returns of Sindh Sales Tax and imposed penalty amounting to Rs. 5,921,327 for the periods from July, 2013 to February, 2017, vide his order dated 05.07.2017.

02. The Commissioner (Appeals) on appeal filed by the appellant confirmed the order-in-original in toto vide his order dated 23.01.2018. Hence this appeal before us.

03. The learned A.R. argued that penalty was not only harsh but the calculation was incorrect. For example, he submitted, penalty was also charged for holidays, Sundays, etc. However, he could not answer satisfactorily as to why the appellant did not file returns even after voluntarily registration on 30.12.2014 till the issue of show cause notice on 08.05.2017 and why he did not pay tax even after generation of PSID,s / Challan on 17.09.2017 for Rs. 1,480,320/-. He paid only



Rs.32,315/- and Rs.38,261/- for April, 2017 and May, 2017, respectively. During the hearing of appeal on 08.03.2018 Mr. Shukrullah Advocate the learned AR, promised that he would persuade his client to file returns and to pay tax for the tax periods from January, 2015 onwards. However, on the next hearing on 22.03.2018 he came up empty handed with the argument that since the calculation of penalty was incorrect it was not tenable in law and that, very blatantly argued, his client did not pay tax as he had no money.

04. The learned AC-SRB, Mr. Zaheer Hussain, on the other hand, argued that the attitude of the appellant has been totally non-cooperative, as he has neither filed his returns for the earlier periods nor he provided his financial statements and the details of his clients. He submitted tax profile of the appellant showing tax paid for the months from April, 2017 to January, 2018, while neither any return was filed before October, 2017 nor tax was paid for that period.

05. After hearing both the sides and going through the record of the case our findings are as under.

06. Security Services are taxable under tariff code 9818.1000 since promulgation of Sindh Sales Tax Act, 2011. From "taxpayers online verification" of Federal Board of Revenue done by the AC-SRB and placed on record before us, it is evident that the appellant got himself registered for income tax with Federal Board of Revenue on 03rd February, 2009, which amply proves that he was very much in business of providing security services even before 2011. However, he got himself voluntarily registered with SRB, on 30.12.2014. But he did not file any Sales Tax return even after that till a show cause notice was issued on 08.05.2017 by the SRB. Still after much haggling the appellant filed two returns for April, 2017 and May, 2017 on 02.10.2017 and paid tax at Rs.32,315/- and Rs.38,261/- respectively. It is also brought to our knowledge that the appellant got issued PSID,s / challan for Rs.1,480,320/- on 17.09.2017 but failed to pay it as per CPR,s. Return for April 2017 and paid subsequent periods, were filed but no return was filed nor tax was paid for the periods prior to April,2017. Thus the default of non-filing of returns was committed. The learned A.R. has not been able to satisfy us about the reasons for this act of non-compliance. Further, as mentioned earlier, even during the hearing of this appeal the appellant through his AR, was accorded opportunity to file belated returns during the pendency of this appeal to mitigate the defiant attitude of the appellant.

07. In view of our above findings we are of the considered opinion that offence of non-filing of returns, which were due under section 30, and as confronted by show cause notice dated 08.05.2017 by the Assistant Commissioner, SRB was



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committed and the officer concerned was justified to take action under section 43 (2) of the Act.

08. However, it is observed that the officer concerned has imposed penalty of Rs. 5,921,327 for 44 months which appears very harsh and apparently a result of miscalculation. The AC-SRB on pages 2 & 3 of his order in original has given detailed calculation. It is noted that while he has correctly calculated and imposed penalty @ 5000 p.m. for each of tax periods from July, 2013 to June, 2014, which is in accordance with the provisions of section 43 (2) as it existed before 07.07.2014, for subsequent tax periods i.e. from July, 2014 to February, 2017, after the amendment in section 43 (2) w.e.f. 07.07.2014, the action of AC-SRB is out of proportion as has multiplied penalty for each tax period which is beyond any justification. For example, he imposed penalty of Rs.340,333/- for July, 2014, Rs.330,333/- for August, 2014 and Rs.320,000/- for September, 2014 and so and so forth till February 2017, and thus cumulative amount of penalties for 44 months under section 43 (2) read with section 30 works out Rs. 5,921,327. It may be noted that the officer concerned has not yet passed any assessment order under section 23 regarding sales tax liability of the appellant for any tax period.

09. For the sake of convenience the provisions of section 43 (2) before amendment and after amendment as on 07.07.2014 are reproduced below:

Section 43 (2) Before amendment.

(2) Where any person fails to furnish a return within the due date.

Such person shall be liable to pay a penalty of 5,000 rupees provided that if a return is not filed within fifteen days of the due date, a penalty of 100 rupees for each day of default shall be paid.

Section 43 (2) After amendment on 07.07.2014

(2) Where any person fails to furnish a return within the due date.

¹[such person shall be liable to a penalty of 10,000 rupees per month or a fraction thereof, provided that if a return is filed within ²[ten] days of the due date, a penalty of 300 rupees for each day of default shall be paid.]

10. From the above it is clear that beside the enhancement of amount of penalty the words, "or fractions thereof" have been added after the words "10,000 rupees per month". The officer concerned has misconstrued the words and firstly he committed the mistake by multiplying amount of penalty of Rs.10,000/- by

number of months for which the default continued. Thus he has imposed penalty of Rs.10,000/- for each month of continuous default for each tax period by wrong interpretation of the words 'per month'. In fact the words 'per month' cannot to the 'tax period' which is one month under section 2 (95) of the Act. Every month is a separate tax period and penalty of Rs.10,000/- can be imposed for non-filing of return for subsequent tax periods/months. But imposing penalty for the tax period July, 2014 for all the months all along upto February, 2017 would be illogical and against the intention of the legislature. Another mistake which the AC has committed is misconstruing the words of "a fraction thereof" (a month). He has broken the period into days and worked out penalty of Rs.333.333/- on per day basis which is not correct. From the plain reading of amended provision of section 43 (2), as reproduced above, it is quite clear that for a period of less than 10 days the penalty shall be calculated for each day of default, where as beyond this period full amount of penalty of Rs.10,000/- shall be charged even for a fraction of a month. However, as discussed above, penalty for non-filing of return for one tax period of one month would not be more than Rs.10,000/-.

11. In view of above discussion the correct position of penalty to be imposed as per facts and as per provisions of section 43 (2) would be as under.

a. For the period from July, 2013 to June, 2014 @ 5000 p.m. (for 12 months) as per order in original	-	Rs.60,000
b. For the period from July, 2014 to February, 2017 @ 10,000 (for 32 months) as discussed above	-	<u>Rs.320,000</u>
	Total	<u>Rs.380,000</u>

12. The appeal is partly allowed and the impugned order in original of the AC, Unit-6 dated 05.07.2017 is accordingly modified by us in accordance of our powers under section 62 (5) (a) of the Act.

13. Appeal is disposed of as above.

(Justice® *M. Adeem Siddiqi*)
CHAIRMAN

(Agha Kafeel Barik)
TECHNICAL MEMBER

Karachi

Dated: 27.03.2018

Copy 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) Office Copy. 5 Guard File.

Certified to be True Copy

[Signature]
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD