

(Guard file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

SINGLE BENCH-III

Appeal No.AT-111/2018

M/s Rizwan Moazzam Appellant
Shop No. 11 & 12, Ground Floor,
Rabi Centre, Tariq Road Karachi.
(NTN# 2097929-7)

VERSUS

Assistant Commissioner, SRB, Karachi Respondent

Mr. Nadir Hussain Abro Advocate For the Appellant

Ms. Uzma Ghory, Assistant Commissioner, SRB, Karachi For the Respondent

Date of hearing 17.01.2019

Date of Order 22.01.2019

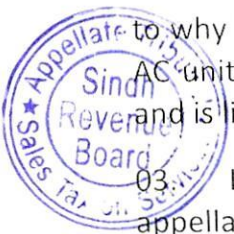
ORDER

Mr. Agha Kafeel Barik: An appeal has been filed against order of Commissioner (Appeal) dated 24.09.2018 whereby he confirmed in toto the order of AC SRB dated 13.11.2018 passed under section 24 B compulsorily registering the appellant under section 24 B and also imposing penalty of Rs.100,000/- under section 43 (1) of Sindh Sales Tax on Services Act, 2011 (hereinafter called the Act).

The facts of the case are as under:

02. The AC SRB issued a show cause notice on 18.12.2014 requiring the appellant as to why he should not be compulsorily registered under section 24 B as in the opinion of AC unit-17 the appellant is a fashion designer under the definition of Section 2 (42 A) and is liable to Sales Tax under tariff heading 9834.0000.

03. In response to the said show cause notice the authorized representative of the appellant submitted before the AC SRB that the appellant is not a fashion designer for the purpose of definition under section 2 (42 A) and that he is simply trading in garments and being registered with FBR it is paying sales tax under Sales Tax Act, 1990. Consequently, the AC passed the impugned order compulsorily registering the appellant



under section 24 B and also imposing penalty of Rs.100,000/- under section 43 (1) of the Act.

04. An appeal was filed by the aggrieved person before the Commissioner (Appeals). However, after lapse of prescribed period for disposal of appeal, the Commissioner (Appeals) sent the undecided appeal to AT- SRB under section 59 (8) of the Act.

05. After an order of this Tribunal dated 21.03.2017 remanding the case to Commissioner (Appeals), the said appellant authority finally passed order under section 59 on 28.09.2018, by which he upheld the order-in-original in toto. Hence this appeal before us.

06. In this appeal the following issues have been raised.

1. The appellant has been wrongly registered under section 24 B as fashion designer whereas he is common tailor cum garments merchant and is paying tax under Sales Tax Act, 1990.

2. Penalty of 100,000 imposed under section 43 (1) is not only unjustified but also illegal as no show cause notice was served under section 43.

3. Penalty is part of "Tax" as defined under section 2 (92) (b) of the Act. Hence for imposition of penalty it is necessary to invoke Section 23 which provides for assessment of tax.

4. The department has not enough evidence against the appellant and has registered him under section 24 B as fashion designer merely on the basis of its website which was for publicity purpose and nothing else.

07. Arguing for the appellant Mr. Nadir Hussain Abro, Advocate the learned A.R submitted that the appellant is an ordinary business man having various outlets and selling and purchasing stitched and un stitched garments and is in no way engaged in fashion designing, as alleged by the department. He also argued that all the findings of the AC SRB are based on assumptions and information on the web-site of the appellant which is meant for publicity and advertisement only and that the department has no conclusive evidence in support of its allegations. On the issue of penalty he submitted that penalty and default surcharge are covered under the definition of "Tax" under section 2 (92) the assessment of which is provided under section 23. Thus he argued, a specific show cause notice is required under the said Section which was not given. He cited various decisions, mostly of Appellate Tribunal Inland Revenue and some others of Sindh High Court which are all on general principles of taxation and unfortunately none of them was specifically relevant to the present case.



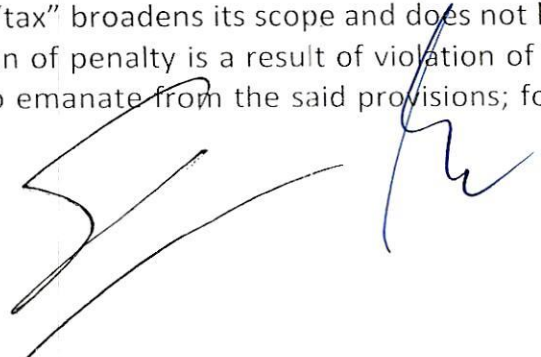
08. On the other hand Ms. Uzma Ghory AC-SRB supported the orders of the officers below and submitted that the appellant is a renowned fashion designer and its own website speaks the truth and that he cannot step back from what is on the surface. About penalty imposed under section 43 (1) she argued that there are specific provisions for imposing penalties for various defaults provided separately under various sub-sections of Section 43 and that the procedure was properly followed. She referred to Section 24B under which impugned order has been passed and submitted that under sub-section (2) of 24 B a show cause notice in advance was issued on 18.12.2014. She specifically referred to Para 3 of the show cause notice by which the appellant was required to show cause as to why penalty under section 43 (1) should not be imposed for violation of section 24 of the Act.

09. After going through the record and arguments of both sides my findings are as under:

9.01 On the legal issue of imposing penalty under section 43 (1) without issuing a show cause notice under section 23 it is observed that the argument of the learned A.R. on this issue is unfounded. Section 23 provides for assessment of tax on services whereas penalty for non-payment/ short payment of tax has been provided under section 43 (3) for which the mechanism is provided separately. While penalty for non-payment/ short payment under section 43 (3) would be imposed by issuing show cause notice under section 23 (2), a show cause notice for default of section 24 has been provided in Section 24 B (2). In the instant case a show cause notice has been duly issued on 18.12.2014. This show cause notice and its reply has been duly dismissed in Para's 03 and 04 of the order-in-original.

9.02 It is because the impugned order has been passed under section 24 B and a show cause notice for the registration under section 24 and imposition of penalty under section 43 (1) in case of default is provided under section 24 B and same procedure has been duly followed. Hence there is no force in the argument of the learned A.R that for imposition of penalty under section 43 (1) in case of default of 24 the AC SRB should have invoked Section 23; both are separate provisions to deal with different situations.

Related to this issue the learned A.R. has also raised an issue that since penalty falls under the definition of "Tax" under section 2 (92) (b) and that without invoking Section 23 the order of penalty under section 43 is invalid. In this regard it is observed that the definition of "tax" is broad based and is designed to encompass all charges of sales tax as well as related charges such as penalty, default surcharge, additional tax, fine or fee or any other sum charged, payable or recoverable under the Act, or the Rules. Thus the definition of "tax" broadens its scope and does not limit it to the assessment of tax only. The imposition of penalty is a result of violation of a certain provision of law and penal provision also emanate from the said provisions; for example penalty under section 43



- (3) emanates from Section 23 which is assessment of tax and penalty under section 43
(1) emanates from Section 24 A which is compulsory registration.

In this case Section 23 would have been invoked if the case was that of non/ short payment of tax read with section 43 (3). But as it a case of compulsory registration, the relevant section invoked by the AC is Section 24 B, whereas penalty for the default of not getting registered under section 24 is provided under clause (1) of Section 43 which has been rightly invoked.

10. On the factual ground the AC SRB has placed enough material to prove that the appellants is a fashion designer falling under the definition under section 2 (42 A). The website snap shots, the field inquiry reports, the registered trade mark are enough evidence in her support. Besides, few parameters which distinguish a fashion designer from a simple trader or a tailor are as under:

10.1. A brand name, mostly registered with the Trade Mark authority is a symbol of a fashion designer; a common Mohalla tailor does not require the same. A branded item always fetches a good and sometime very good price, whereas a common tailor made suit costs only the price of fabric and tailoring charges.

10.2. Most garments, if not all, are distinct from each other. A fashion designer maintains the distinction and charges for the individuality.

10.3. Copying of a designer's item, whether a ladies or gents dress or any other item, is strictly prohibited. To prevent such copying and to safeguard its rights a fashion designer registers its designs carrying its Logo and / or trade mark.



10.4. In this case an artistic monogram of Rizwan Mazzam brandishing on its website with the slogan "fashion designer" is also placed on record by the AC-SRB as an evidence. The web-site which is got designed on payment by the appellants also proclaims him as a fashion designer. The argument of the learned A.R. that it was merely for publicity sake carries no weight.

10.5. It is the special designing which counts for value addition in a bridal dress which fetches lacks of rupees. Even on international level it is the brand name which fetches a real good price.

10.6. The reports published in print and electronic media about participation of the appellants in international fashion shows/ exhibition is also an evidence of his being a professional fashion designer.

11. In view of the above findings I hereby confirm the impugned order and maintain the registration of the appellant as fashion designer under section 24 B.
12. On the issue of penalty I note that the AC-SRB in Para 11 of her order-in-original has stated the since the appellant did not comply with the notice of registration she imposed penalty of 100,000/- under section 43 (1). Since the appellant failed to comply with the terms of the said notice the action of penalty appears to be justified. However, in the fairness of things I hereby order that if the appellant, in consequence of order of registration, files sales tax returns under section 30 within 15 days of the receipt of this order, the amount of penalty shall be reduced to 10,000/-. In case of non-compliance of this order the original order of penalty of 100,000/- under section 43 (1) shall stand confirmed.
13. Appeal is disposed of as above.

(Agha Kafeel Barik)
TECHNICAL MEMBER

Karachi

Dated: 22.01.2019

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. Office Copy.
5. Guard File.

REGISTRAR
APPELLATE TRIBUNAL
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