

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-16/2018

Assistant Commissioner, SRB, Appellant

Versus

M/s Frontline (Pvt.) Ltd. Respondent

Mr. Muhammad Sharif Malik, Assistant Commissioner, SRB, For the Appellant

Mr. Jaffer Ali Zaidi, Director For the Respondent

Date of hearing 07.05.2018

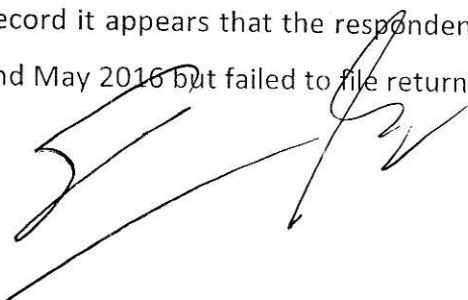
Date of Order 10.05.2018

ORDER

Mr. Agha Kafeel Barik: This appeal has been filed by Assistant Commissioner (Unit-23), SRB against order of Commissioner (Appeals) dated 16.02.2018 whereby he has reduced penalty for non-filing of 14 returns, imposed by the AC-23, SRB at Rs.1,470,000/- under Section 43(2), to Rs.130,000/- and then further reduced the same to Rs.60,000/- with the condition that the said amount was paid within 15 days of his appellate order. Since the respondent tax payer paid Rs.60,000/- within the said stipulated period he was finally discharged of his liability. The AC has challenged this order of Commissioner (Appeals) as illegal and against the provisions of Section 43(2) of the Act.

2. As per facts on record the respondent tax payer was registered on 02.05.2016 under tariff Code 9836.0000 providing Intercity Transportation services. It was providing transportation services to Agility Logistics which deducted 100% Sales tax payable on the services and also deposited it in the government exchequer. As such there is no dispute about taxability of the services and payment of tax.

3. From the record it appears that the respondent tax payer filed sales tax returns for the tax periods April and May 2016 but failed to file returns for subsequent fourteen tax periods i.e.



from June 2016 to July 2017 without any valid reason. Thus the AC (Unit-23), after serving a show cause notice, imposed penalty of Rs.1,470,000/- under section 43(2) as per his calculation gives in his order in original dated 19.12.2017.

4. The Commissioner (Appeals) in his appellate order dated 16.02.2018 has discussed the issue at length and finally following the appellate order of the Appellate Tribunal in the case of M/s Slingshot (Pvt.) Ltd. in appeal No.AT-92/2016 decided on 26.01.2017, reduced the penalty from Rs1,470,000/- to Rs.130,000/-. He went further to allow extra concession to the respondent tax payer and reduced it to Rs.60,000/- if it was paid within 15 day of his order. As per record the tax payer did pay the amount within the stipulated period.

5. Mr. Sharif Malik, AC-SRB who appeared before me conceded that the ^{order} of the Commissioner (Appeals) about imposition of penalty in the line of Tribunal's order in Slingshot (Pvt.) Ltd. in AT-92/2016 was logically correct. He however, agitated that the Commissioner (Appeals) has no powers under the law to allow any concession in the amount of penalty beyond the limit fixed under section 43(2) and as interpreted by the Tribunal. He challenged the said order as illegal and requested it to be quashed.

6. Mr. Jaffer Ali Zaidi a Director of Frontline (Pvt.) Ltd. who appeared in person submitted that the amount of penalty reduced to Rs.130,000/- was harsh and he has managed to pay with difficulty the reduced amount of Rs.60,000/- as fixed by the Commissioner (Appeals).

7. After hearing both sides my findings are as under.

7.1. The AC-SRB had as per old practice of the departmental officers compounded the offence and multiplying number of 14 tax periods (of one month each) with the number of months of default of each return arrived at cumulative amount of Rs.1,470,000/- of penalty under section 43(2).

7.2. In an earlier decision the Appellate Tribunal has decided this issue. This judgment in the case of M/s Slingshot (Pvt.) Ltd. dated 26.01.2017 has been cited and followed by the Commissioner (Appeals) although with certain reservations. The said judgment is reproduced hereby for the sake of ready reference:

"Besides, the learned counsel took the plea that the quantum of penalty imposed by the AC was not only harsh but unjustified and based on lack of proper interpretation of the penal provision. He argued that section 43(2) provided Rs.10,000/- only one time for an offence whereas the AC had compounded the penalty with every month for the whole period of default of non-filing of returns for 13 months; December, 2014 to February, 2016. Penalty @ Rs.10,000/- for each not filed return worked out to Rs.130,000/- in aggregate. However, the Assistant Commissioner multiplied the number of returns with the number of months which is too harsh and excessive. The intention of legislature in the enactment of penal provision is always deterrent and corrective in nature. Here also the phrase per month appears to be related to a return of sales tax which is to be filed every month. It is now well settled principle of law that if there appears any ambiguity in any provision of law same has to be resolved in favor of the tax payer as held in M/s Mehran Associates versus Commissioner Income Tax, Karachi 1993 SCMR page 274. It was also held by Sindh High Court in M/s Citi Bank versus Commissioner Inland Revenue that if two reasonable interpretations are possible, the one favoring the tax payer will be adopted. Multiplying the amount of penalty with number of months will be illogical and against the spirit of law."

7.3. The Commissioner (Appeals) has followed the said decision and while upholding the order in original in principle has confirmed that the default of non-filing of returns was malafide on the part of the defendant and since there was mens rea in his act the imposition of penalty was justified. Yet he reduced the amount of penalty to Rs.130,000/- as per interpretation of the Tribunal in the above cited judgment. The calculation of penalty at Rs.130,000/- for non-filing of 14 returns also appears to be incorrect.

7.4. However, while concluding his order the Commissioner (Appeals) has observed that there were no assessment proceedings and there was no evasion or loss of revenue, yet there was element of carelessness and ignorance of law behind non-filing of returns which in his opinion should not go unpunished. Then ^{he} reduced the amount of penalty further to Rs.60,000/- payable in 15 days. In my opinion the learned Commissioner (Appeals) had no authority to allow such a concession from his own side. Either he should clear him of the offence if he finds him innocent or if he finds him guilty, as he did in this case and worthy of

punishment, he should impose penalty as per law. Reference to the order of the Tribunal is well placed. It should be noted that the Tribunal did not allow any concession or reduction in penalty at its own. What it did was the interpretation of the provisions of Section 43(2) of the Act. On the other hand, while the learned Commissioner (Appeals) appears to have reservations about the order of the Tribunal which he was bound to follow, he has not given any valid reason for reduction in the quantum of penalty from Rs.130,000/- to Rs.60,000/-, nor is there any such provision of law for reduction in the quantum of penalty. It is either leviable or not leviable; there is no way in between.

8. In view of the above findings I order the impugned appellate order of the Commissioner (Appeals) to be amended so as to confirm the order in original on the legal issue of imposition of penalty but restrict it to Rs.140,000/- for default of non-filing of 14 returns, calculated according to the interpretation by the Tribunal in the judgment cited above.

9. The departmental appeal is disposed of as above.


(AGHA KAFEEL BARIK)
MEMBER TECHNICAL

Karachi

Dated :10.05.2018

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) Office Copy.
- ✓ 5) Guard File.


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