

(Guard file)

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

SB-I

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APPEAL NO. AT-26/2018

M/s Kohinoor Battery Manufacturing (Pvt) Ltd.Appellant

Versus

Assistant Commissioner, SRB, Karachi.....Respondent

APPEAL NO. AT-27/2018

M/s Kohinoor Chemical Company (Pvt) Ltd.Appellant

Versus

Assistant Commissioner, SRB, Karachi.....Respondent

APPEAL NO. AT-28/2018

M/s Kohinoor Soap and Detergent (Pvt) Ltd.....Appellant

Versus

Assistant Commissioner, SRB, Karachi.....Respondent

Mr. Rizwan Atara, Tax Consultant for Appellant

Mr. Ghulam Mustafa, AC-SRB for Respondent



Date of hearing 08.06.2018

Date of Order 08.06.2018

ORDER

Justice® Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal No.53/2018, 54/2018 and 55/2018 dated 10.04.2018 passed by the Commissioner (Appeals-II) in Appeals No. 33/2018, 34/2018 and 35/2018 confirming the Order in Original No. 30/2018, 31/2018 and 32.2018 dated 19.01.2018 passed by the Assistant Commissioner Unit-24-Withholding (Mr. Ghulam Mustafa Kathio) SRB, Karachi.

1. The appeals are disposed of by a common order for the reason that the appeals are between the same parties and the facts and law involved are also same. The learned representatives of the parties have advance same arguments in support of their respective pleas.
2. It was alleged in the order-in-original that appellant had ignored the statutory letters regarding information requisitioned, failed to comply with the legal provision and have failed to produce Annual Audited Accounts for the year 2012-2013, 2013-2014, 2014-2015 and 2015-2016 for assessing the actual value of taxable services in terms of section 23 of the Act.
3. That a show cause notice dated 26.12.2017 was served upon the appellant under section 52 of the Sindh Sales Tax on Services Act, 2011 (herein after referred to as the Act, 2011) was served on the ground that the appellant failed to comply the legal provision and failed to produce record asked for.
4. The Assessing Officer passed the order in original imposing penalty of Rs.100,000/= under serial No.15 of the table of section 43 of the Act on the ground that despite fixing various dates of hearing and taking extensions the appellant failed to furnish the requisite record.

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5. The said order of the Assessing Officer was challenged by the appellant by way of filing appeal before the Commissioner (Appeals), who dismissed the appeal, hence this appeal.
6. Mr. Rizwan Attara the learned Representative of the appellant submitted that the department has not assigned any reason for asking the documents. He referred to clause (a) of sub section (1) of section 52 of the Act, 2011 and submitted that assigning reason for calling documents is necessary. He then submitted that documents can only be asked for specific purpose and not for roving inquiry. He relied upon the reported judgment of the Honorable Supreme Court in the case of Assistant Director, Intelligence and Investigation, Karachi versus M/s B. R. Herman and others.
7. Mr. Ghulam Mustafa the learned Representative of the respondent submitted that the appellant is a recipient of various services and is required to maintain record. He then submitted that by virtue of sub-rule 10 of rule 3 of the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 (herein after referred to as the Withholding Rules) the appellant being a withholding agent shall require to furnish to the Officer of the SRB all such information or data as may be required by him for carrying out the purpose of these rules and assigning reason is not necessary. He then submitted that on failure of the appellant to provide documents asked for the penalty was rightly imposed.



I have heard the learned representatives of the parties and perused the record made available before me.

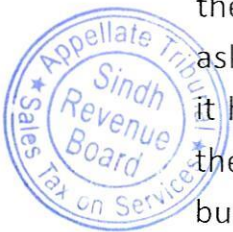
8. The case of the appellant is that no reason for asking the documents had been assigned and without assigning reason the documents cannot be asked and imposing penalty is not proper. The case of respondent is that despite service of letters and show cause notice the appellant failed to provide the documents asked for and the penalty under serial No.15 of table of section 43 of the Act for non-compliance of provisions of section 52 was rightly imposed.

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9. Section 52 of the Act provides obligation to produce documents and provide information. The respondent served Notice under section 52 (1) upon the appellant. From perusal of section 52 (1) of the Act it appears that it applies to any person required to maintain any [*record under this Act or any other law for the time being in force*]. The appellant is a private limited company and is required to maintain record under section 220 of the Companies Act, 2017 and is covered under this provision. The appellant is also a withholding agent and under sub rule 10 of rule 3 of withholding rules is required to furnish information or data to the officer of SRB.

10. Clause (a) of sub-section (1) of section 52 of the Act provides that “(a) produce for examination, such documents or records which the officer of the SRB considers necessary [*in relation to any matter under the Act*] or relevant to the audit, inquiry or investigation under the Act”. Perusal of the two letters dated 13.09.2011 and 27.09.2011 by which the documents were asked for show that no reason for asking the documents has been assigned. However in the show-cause notice dated 26.12.2017 it was stated that the “*record is required for assessing the actual value of taxable services in terms of section 23 of the Act, 2011*”. Sub-clause (a) provides that record can be asked for [*in relation to any matter under the Act*]. The reason for asking the documents was “for assessing the actual value of taxable services in terms of section 23 of the Act” is covered under this provision and is a sufficient reason for asking documents. Section 52 (1) of the Act cannot be read in isolation, it has to be read with relevant clause of sub-section (1) of section 52 of the Act, 2011. It is true that in two letters the reason was not assigned but in the show cause notice reason was assigned and the same is the sufficient compliance of the provision of law.

11. As far as the imposition of maximum penalty of Rs.100,000/ under serial-15 of Table of Section 43 of the Act is concerned, the provision provides that “where any person fails to provide the document or record or information or data or refuses to allow the officer of SRB to take



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extracts from or make copies of the document or record or information or date or fails to appear before an officer of SRB or fails to answer any question put to him, such person shall be liable to pay penalty of Rs.100,000/=. The appellant has contested the matter on the plea that no reason for asking the documents has been assigned in ignorance of the contents of the show cause notice. It appears that the documents asked for are necessary for assessing the actual value of services under section 23 of the Act and no purpose will be served in penalizing the appellant for not providing the documents asked for without having documents which are otherwise required for assessing the actual value of taxable services.

12. The law gives the discretion to the Assessing Officer to impose or not to impose the penalties. In the reported case of Malt-79 Manufacturers vs. Collector 1995 PTD 345 the Honorable Lahore High Court has held that expression "*shall be liable*" in contradistinction to "*shall pay*" clearly vests discretion in the Adjudicating Officer to levy or not to levy additional sales tax even in the event of failure of a person to pay the sales tax keeping in view the facts and circumstances of the case and reason for non-payment". Although the reported case relates to the Sales Tax Act, 1990 the principles laid down in the reported cases are squarely applicable to this case as the words used in column (2) of Table 15 of Section 43 are "*such person shall be liable*" which clearly gives discretion to the Assessing Officer to impose or not to impose penalty.

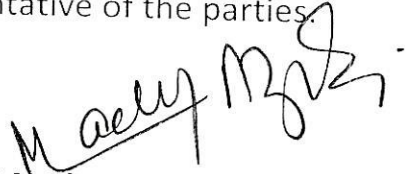
13. The Tribunal is also vested with the powers to waive the penalty. In the reported case of Collector Customs versus Nizam Impex (PTCL 2014 CL 426 (SHC)) a learned DB of Sindh High Court has held that "*If the party did not act malafidely with intention to evade the tax, the imposition of penalty and additional tax and surcharge is not justified. In such circumstances the Tribunal has discretion to waive/remmit additional tax and penalty*". Although the reported case deals with the penalty for non-payment of tax the principle is applicable in this case.



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14. I therefore taking a lenient view reduced the penalty from Rs.100,000/= to Rs.25,000/= provided the appellant supplied documents asked for within fifteen days from the date of receipt of the copy of this order.

15. The appeal is partly allowed. The appeal is disposed of. Copy of the order may be provided to the learned representative of the parties.



(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi.

Dated: 08.06.2018

Copies supplied to:-

1. The Appellant through Authorized Representative.
2. The Assistant Commissioner, SRB, Karachi.

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office copy
- 5) ~~Guard file.~~

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