

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-29/2018

Assistant Commissioner SRB, Karachi. .... Appellant

**Versus**

M/s Awan Brother Services. .... Respondent

None present ..... For Respondent

Mr. Sharif Malik Malik AC-SRB, Karachi. .... For Appellant

Date of hearing 21.05.2018

Date of Order 22.05.2018

ORDER

**Mr. Agha Kafeel Barik:** This appeal has been filed against order of Commissioner (Appeals) dated 02.03.2018, whereby he ordered that penalty under section 43 (2) for not filing of 6 monthly returns imposed by the AC-SRB at Rs. 60,000/= to be reduced by 50% i.e. Rs. 30,000/= to be paid within 18 days of his order.

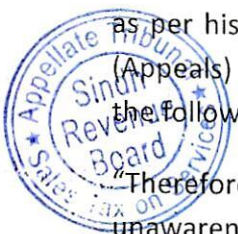
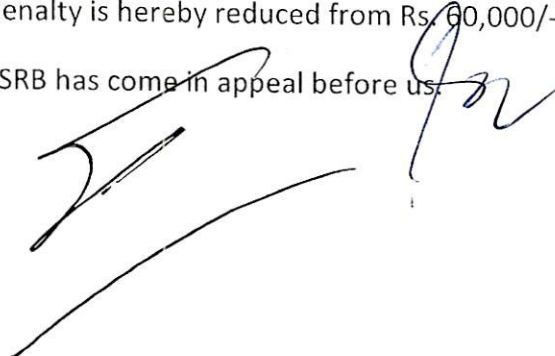
The facts of the case are as under:

02. Since the respondent tax payer had voluntarily registered himself on 24.07.2014 under tariff heading 9836.0000 ("Intercity Transportation etc"), he was obliged to file monthly returns under section 30, for the tax periods from January to June, 2017 by the due dates, which he did not, thus invoking penal action under section 43 (2) of the Act.

03. The AC-Unit (23), SRB after serving Show cause Notice imposed penalty of Rs. 60,000/= as per his order-in-original dated 10.01.2018. However, on appeal the learned Commissioner (Appeals) reduced the amount of penalty by 50% i.e. to Rs. 30,000/= to be paid in 15 days with the following reason.

"Therefore, from the above discussion it may be seen that although the Appellant's plea of unawareness cannot be accepted, but at the same time it is to be necessarily considered that the Appellant successfully filed the SST returns for the alleged tax period. Therefore, in order to meet the ends of justice the penalty is hereby reduced from Rs. 60,000/- to Rs. 30,000/-."

It is on this issue that the AC-SRB has come in appeal before us.



04. While Mr. Sharif Malik AC-SRB attended for the SRB, none attended for the defendant tax payer despite valid service of notice.

05. Mr. Sharif Malik argued that once the element of *mens-rea* was established in this matter and penalty has been imposed by the AC concerned the Commissioner (Appeals) has no legal authority or justification to allow any reduction or relief in the amount of penalty.

06. The matter has been examined. It is noted that defendant voluntarily registered himself under tariff heading 9836.0000 on 24.07.2014 and was under obligation to e-file monthly returns; but he did not. It was after issue of a Show Cause Notice on 27.09.2017, and service thereof for non-filing of returns for the tax periods January to June, 2017 (6 months) that the respondent woke up and took so many excuses including nil business, ignorance of law etc. and filed returns somewhere in October, & November, 2017.

The AC-SRB has therefore justifiably imposed penalty of Rs. 60,000/= under section 43 (2) as interpreted by this Tribunal in the case of M/s Slingshot (Pvt.) Ltd in Appeal No AT-92/2016. Since the Commissioner (Appeals) has confirmed that the offence of non-filing of returns was committed, he had no authority to reduce the penalty from 60,000/= to 30,000/= on compassionate grounds, as also decided by this Bench of the Appellate Tribunal in the case of M/s Frontline (Pvt.) Ltd. In AT-16/2018 decided on 10.05.2018.

07. Accordingly the impugned order of Commissioner (Appeals) is hereby set aside and the order under section 43 (2) AC-SRB is restored.

  
(AGHA KAFEEL BARIK)  
TECHNICAL MEMBER

Karachi

Dated: 22.05.2018

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.

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD