

**BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD**

**DB-I**

**Appeal No.AT-32/2018**

M/s MAB (Services) (Pvt.) Ltd. .... Appellant

VERSUS

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

Syed Adeel Imam, Advocate ..... For the Appellant

Mr. Rashid Ali, Assistant Commissioner, SRB, Karachi ..... For the Respondent

Date of hearing 11.06.2018

Date of Order 04.07.2018

**ORDER**

**Mr. Agha Kafeel Barik:** An appeal has been filed by a private limited company against order of Commissioner (Appeals), dated 16.05.2018. The facts of the case are as under.

2. The appellant was voluntarily registered on 25<sup>th</sup> November, 2015 with the principal activity of "Business Support Services" under tariff code 9805.9200 and according to the learned A.R. it has been filing S.S.T. returns ever since, which claim was not challenged by the department. However, on 14.12.2017 a show cause notice was received by the appellant stating that as per financial statement for the period from 01.07.2014 to 30.06.2015 it appeared that the registered person had not paid S.S.T. on its receipts of Rs.14,401,130/- from rendering services for the financial year ended 30.06.2015. The appellant submitted, through its authorized person, that since it was registered on 28.11.2015 it was not liable either to file returns under section 30 or to pay Sindh Sales Tax prior to the date of registration.

3. However, the point of view of the registered person was not accepted by the department and order in original was passed by AC-SRB on 07.03.2018 under section 30 and 43(2) creating Sindh Sales Tax demand of Rs.2,160,170/- with penalty of rs.2,368,178/-.

4. On appeal the Commissioner (Appeals), confirmed order in original in principal. However, he gave 10 days to the appellant to pay principal amount of Sindh Sales Tax and default surcharge to get the penalties waved. The appellant, however, neither paid principal amount of Sindh Tax nor took benefit of the concession given by Commissioner (Appeals), and has filed this appeal before us.

5. Syed Adeel Imam Advocate, the learned A.R., submitted that the appellant was not under legal obligation either to pay / deposit sales tax or to file sales tax returns under section 30 for the period prior to the date of registration which in this case was 25.11.2015. He cited

two judgments of this Tribunal in his favor, one in the case of M/s National Asset Management (Pvt.) Ltd decided on 09.04.2015, followed in another case of M/s Target TMC (Pvt.) Ltd. Decided on 26<sup>th</sup> January, 2017.

6. He further submitted that as the service provider/ the appellant had not issued any invoices with Sindh Sales Tax for its services provided to its customers / recipients of services he was not liable to pay tax from his pocket. He further stated that as per definition of "registered person" under section 2 (71) no provision of the Act was applicable to the appellant, nor he was entitled to any benefits available to a registered person before 28.11.2015 and accordingly he does not fall under the ambit of section 30 or section 43.

7. Mr. Rashid Ali AC-SRB submitted that the Business Support Services under tariff code 9805.9200 was brought to tax-net effective from 1<sup>st</sup> July, 2013; he placed a photocopy of Sindh Finance Act, 2013 (relevant page 21, item (d)). He then submitted that since the appellant was providing taxable services before registration it was "deemed to be a registered person" as provided under sub section (71) of section 2 of the Act and was liable to pay Sindh Sales Tax in the capacity of service provider of taxable service. He then referred to section 24 of the Act and submitted that appellant is a resident person and is a provider of service and is liable to be registered. He then submitted that the appellant despite his request failed to provide the details of services provided to various service recipients.

8. In rebuttal Mr. Adeel, the learned A.R., submitted that details were provided but invoices were not provided as no taxable invoices were issued. He then submitted that penalties and default surcharge were imposed without justification and the department also failed to establish any ground to impose penalty under table 6 (d) of section 43 of the Act, as there was no element of fraud.

9. The issue in this case is quite clear. It is whether the appellant who was registered on 25.11.2015 was liable to pay tax on its receipts as service provider and was also liable to file returns for the period prior to 25.11.2015, the date of his voluntarily registration.

10. The first contention of the Appellant was that it was registered on 6<sup>th</sup> January, 2014 and before the registration is not liable to pay sales tax. The contention has no force. The appellant is liable to get registration before providing or rendering taxable services. Sub-section (1) (a) of section 24 provides that registration will be required for all persons who:- (a) are residents; (b) provide any of the services listed in the second schedule from their registered office or place of business in Sindh. It is not disputed that he appellant is a resident person and providing taxable service in Sindh.

11. Subsection (1) of section 9 of the Act provides that where a service is taxable by virtue of subsection (1) of section 3 of the Act the liability to pay the tax shall be upon the registered person providing the service. Sub section (71) of Section 2 provides the definition of "registered person" and "the person liable to be registered" is included in the definition. The appellant being a resident person and providing taxable service is deemed to be registered person and as per sub-section (1) of section 9 of the Act is liable to pay the tax.

12. It is noted that Business Support Services were brought to tax net under tariff code 9805.9200 through Finance Act, 2013. It is also noted that the appellant is a limited company and there is enough evidence, such as its financial statement, to prove that it was engaged in



economic activity, as defined in section 4 and was providing taxable services prior to the date of his registration i.e. 25.01.2015. Being a company it has no explanation as to why it did not issue invoices with Sales Tax charged to its customers and why it did not recover tax from them to pay in government treasury. If it did not recover it from the recipients it cannot absolve himself from the obligation of paying it to the government. The argument that since it got registration on 25<sup>th</sup> November, 2015 it was not liable to pay tax for the period prior to the said date and also to file Sales Tax return is also unfound. In this way every defaulter would go scot-free taking advantage of late registration / enrolment.

13. As decided in earlier two decisions of the Tribunal in M/s Target TMC and M/s National Asset Management the action for default of non filing of returns under section 30 can be condoned on technical grounds. But as provided in section 3 every person liable to be registered is under the same obligation as a person registered under section 24. The appellant was very much liable to be registered since the date it started economic activity and provided taxable and received payments.

14. Hence while in the ratio decidendi of the earlier decisions of the Tribunal non filing of Sales Tax under section 30 can be condoned for the period prior to 25.11.2015, he cannot be exonerated from his liability of payment of Sales Tax on receipts for services amounting to Rs.14,401,130/- rendered from July, 1<sup>st</sup> to June, 30<sup>th</sup> 2015. Thus we hold the action of the AC-SRB for recovery of sales tax of Rs. 2,160,170/- as justified and is hereby confirmed.

15. The Penalty under 43 (2) for non filing of returns is deleted in view of above findings as default of non filing of returns was not deliberate. Penalty, under section 43 6 (d) is also not justified as it involves fraud, etc. which does not appear to be the intention of the appellant throughout the proceedings. Penalty under section 43 (3) for non-payment of tax is, however, confirmed as justified.

16. The appeal is disposed of as above.

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

  
(Agha Kafeel Barik)  
TECHNICAL MEMBER

Karachi

Dated: 04.07.2018

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.

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**REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD**