

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

SB-I

APPEAL NO. AT-38/2018

Assistant Commissioner, Unit No. 23, SRB, Karachi.....Appellant

Versus

M/s Mehmood Goods Transport Company.....Respondent

Mr. Muhammad Yousuf Bukhari, AC, SRB, for Appellant

Mr. Osama Naseer, Manager Operation for Respondent

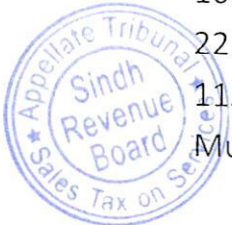
Date of filing of Appeal: 11.06.2018

Date of hearing: 03.07.2018

Date of Order: 11.07.2018

ORDER

Justice ® Nadeem Azhar Siddiqi, Chairman: This appeal has been filed by the appellant challenging the Order-in-Appeal No.66/2018 dated 10.05.2018 passed by the Commissioner (Appeals) in Appeal No. 221/2018 filed by the Respondent against the Order- in-Original No. 115/2018 dated 08.03.2018 passed by the Assistant Commissioner (Mr. Muhammad Yousuf Bukhari) Assistant Commissioner -23, SRB, Karachi.



01. The facts of the case as mentioned in the Order-in-Original are that the respondent has got voluntarily registration with SRB under service category of inter-city transportation or carriage of goods by road or

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through pipeline or conduit, 9836.0000 of the 2nd Schedule of the Sindh Sales Tax on Services Act, 2011 (herein after referred to as the Act). It was further stated that the respondent under section 30 of the Act required to e- file monthly returns within due date.

02.It was alleged that the respondent failed to e-file monthly sales tax returns for the periods from March, 2017 to June, 2017.

03.The respondent vide show-cause notice dated 29.09.2017 was required to explain as to why penalty under serial No.2 of Table under section 43 of the Act may not be imposed on it for non-filing of monthly returns.

04.The respondent neither appeared before the Assessing Officer nor filed any reply.

05.The Assessing Officer passed order against the respondent imposing penalty of Rs.40,000/= under Sr. No.2 of Table under section 43 of the Act.

06.The said order of the Assessing Officer was challenged by the respondent by way of filing appeal before the Commissioner (Appeals), who allowed the appeal, hence this appeal by the Department.

07.Mr. Yousuf Bukhari the learned AC for the appellant submitted that the overall conduct of the tax payer is very relevant in determining the default in filing of tax returns. He then submitted that the appeal for the minor amount of penalty of Rs.40,000/= has been filed to differentiate between a compliant and non-compliant tax payer. He then submitted that due to delay in filing of returns the tax was also delayed. He then submitted that the Commissioner (Appeals) without lawful authority waived the penalty and the order is liable to be setaside.

08.Mr. Osama Naseer the learned representative of the respondent fully supported the order in appeal. He submitted that the returns were e-filed immediately after the receipt of show-cause notice even before passing of the order in original and the delay if any was neither willful nor deliberate nor with malafide intention. He then submitted that the



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Commissioner (Appeals) has rightly exercised discretion vested in it in favour of the respondent and without pointing out any substantial error in the order in appeal the same cannot be set aside. He then submitted that the appellant is a small trader and is facing difficulties in recovering the tax from its clients.

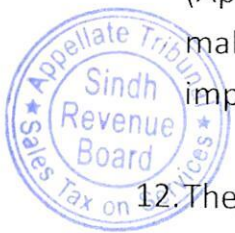
09. In rebuttal Mr. Yousuf Bukhari pointed out that on the day of passing of the order in appeal the respondent was in default in filing of returns from January-2018 to February, 2018 and as of today (date of hearing of this appeal) the respondent is in default in filing of returns from April 2018 to May, 2018 and is not entitled to any concession.

I have heard the learned representative of the parties and perused the record made available before us.

10. The allegation against the appellant is violation of section 30 of the Act read with Rule 13 & 14 read with rule 42G of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) for not e-filing tax returns for the periods from March, 2017 to June, 2017 with in time specified by law. There is no allegation in the order in original on the part of the appellant that it has not deposited the tax with in time.

11. The learned Commissioner (Appeals) in exercise of his discretion had waived penalty for the reason that the respondent has already filed tax returns of all outstanding periods. It was also held by the Commissioner (Appeals) that the appellant could not bring on record to establish malafide intention of the respondent which is a necessary ingredient to impose the penalties as upheld by the superior court of Pakistan.

12. The language of Serial No. 2 of Table under section 43 of the Act gives discretion to adjudication officer to impose or not to impose penalty. In the case of default to attract the penal provision, there should be an element of inexcusable neglect or omission on the part of tax payer with the intention to cause loss to public exchequer. Furthermore the Department has to establish mensrea, willfulness and malafide on the part of the tax payer, which is lacking in this case.

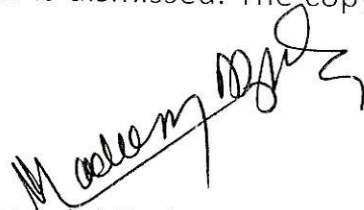


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13. In the reported case of Malt-79 Manufacturers vs. Collector 1995 PTD 345 Honorable Lahore High Court has held that expression "shall be liable" in contradistinction to "shall pay" clearly vests discretion in the Adjudicating Officer to levy or 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". The principles laid down in the reported cases are squarely applicable to this case despite of the fact that this case relates to delay in filing of e-returns and not delay in payment of tax. The case in hand is on better footing as the returns were e-filed before passing of the order in original and the Commissioner (Appeals) has not committed any error in exercising discretion in favour of the respondent.

14. In view of the above discussion the appeal is dismissed. The copy of the order may be provided to the parties.



(Justice (R) Nadeem Azhar Siddiqi)
Chairman

Karachi.

Dated.11.07.2018

Certified to be True Copy

Copies Supplied to:

- 1) The Assistant Commissioner, SRB, Karachi.
- 2) The Respondent through Authorized Representative.



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SINDH REVENUE BOARD**

Copy for Information.

- 3) The Commissioner Appeals, SRB.
- ✓ 4) Guard File.
- 5) Office File.