

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

SB-I

APPEAL NO. AT-39/2018

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

Versus

M/s MRA LogisticsRespondent

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

Mr. Bilal Mahpara, FCA for Respondent along with Mr. Ovais Khan, Financial Manager of Respondent.

Date of filing of Appeal: 11.06.2018

Date of hearing: 03.07.2018

Date of Order: 12.07.2018

ORDER

Justice® Nadeem Azhar Siddiqi, Chairman: This appeal has been filed by the appellant challenging the Order-in-Appeal No.67/2018 dated 11.05.2018 passed by the Commissioner (Appeals) in Appeal No. 144/2017 filed by the Respondent against the Order- in-Original No. 239/2017 dated 31.08.2017 passed by the Assistant Commissioner (Mr. Muhammad Yousuf Bukhari) Assistant Commissioner -30, SRB, Karachi.



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01. The facts of the case as mentioned in the Order-in-Original are that the respondent is engaged in providing the services of transportation of coal from Province of Sindh chargeable to Sindh Sales tax under service category of inter-city transportation or carriage of goods by road or 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) and is a resident person and is required to e-enroll itself with SRB, but the respondent failed to get registration.

02. The respondent vide letter dated 12.07.2017, was required to get registration and to deposit Sindh sales tax on account of inter-city transportation service. In reply the respondent stated that they are providing transportation services from KPK and got registration with the respective sales tax department.

03. The respondent vide show-cause notice dated 08.08.2017 was required to explain as to why it should not be compulsory registered and why penalty under serial No.1 of Table under section 43 of the Act may not be imposed on it for non-registration. In reply the respondent stated that they are already registered with KPRA and pay sales tax @ 15% and file returns with the Authority and double taxation cannot be imposed on grounds of equity and justice. The respondent in support of its claim has not produced any documents.

04. The Assessing Officer passed order against the respondent imposing penalty of Rs.100,000/= under Sr. No.1 of Table under section 43 of the Act for violation of Section 24 of the Act.

05. 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.

06. Mr. Yousuf Bukhari the learned AC for the appellant placed on record invoice of respondent for the tax period January-2016, issued from Karachi office to Lucky Commodities, Karachi. He also placed on record the letter of respondent having address of Karachi. He then submitted



that the respondent despite dealing in taxable services has failed to get registration and the penalty for non-registration has been rightly imposed. He then submitted that he is pressing all the grounds from "A to D" mentioned in the memo of appeal. He then submitted that the Commissioner (Appeals) without lawful authority waived the penalty and the order is liable to be set aside.

07. In the grounds of appeal it has been stated that the order in appeal is bad in law and facts, the remit of penalty is discrimination and injustice with all other complaint tax payers, the act of learned Commissioner (Appeals) is beyond law and has made whole purpose of section 44(i) of the Act redundant.

08. Mr. Bilal Mahpara, FCA the learned representative of the respondent fully supported the order in appeal. He submitted that the respondent is neither doing any business in Sindh nor providing any services in Sindh. He then submitted that the respondent is doing business in the name of Imlak Trading in Sindh and is discharging all obligations under the Act. He then submitted that at the appellate stage the respondent has filed all tax returns despite not providing any services in Sindh. He then submitted that mensrea and willfulness is lacking in this case and no penalty can be imposed unless the same is established by the department. He relied upon the following reported cases.

- i) PLD 1991 SC 963, Humayun Limited versus Pakistan.
- ii) PTCL 1995 CL 415 M/s Lone China (Pvt) Ltd. Versus Additional Secretary, Government of Pakistan (Lahore High Court).
- iii) 2004 PTD SC 1179 D. G. Khan Cement versus Federation of Pakistan.
- iv) 1999 PTD 3907 Maple Leaf Cement Factory versus The Federation of Pakistan (Lahore High Court)

09. Mr. Yousuf Bukhari in rebuttal submitted that the plea of the respondent that it is not providing any service in Sindh is not correct and the plea has been concocted to gain sympathy and to avoid registration.

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

10. The allegation against the appellant is non-registration in violation of section 24 of the Act, which provides that registration will be required

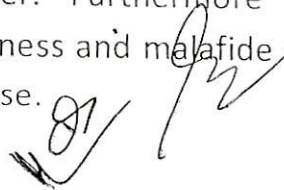


for all persons: (a) who are residents; (b) provide any of the services listed in the second schedule from their registered office or place of business in Sindh and (c) From perusal of the above provision it is clear that registration is necessary for all those who are residents of Sindh and providing any of the services listed in the second schedule to the Act from their registered office or place of business in Sindh. From the invoice and letter produced by the appellant it is confirmed that respondent is a resident of Sindh and is providing service listed in the Second Schedule of the Act from its place of business in Sindh under service category of inter-city transportation or carriage of goods by road or through pipeline or conduit, 9836.0000 of the 2nd Schedule of the Sindh Sales Tax on Services Act, 2011 and is liable to be registered and on failure to apply for voluntary registration under section 24A of the Act the Department may compulsorily register it under section 25B of the Act.

11. The learned Commissioner (Appeals) in exercise of his discretion had waived penalty for the reason that the respondent has corrected its mistake and voluntarily e-filed the Sindh Sales tax returns for 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. 1 of Table under section 43 of the Act gives discretion to adjudication officer to impose or not to impose penalty.

The exercise of discretion by the Commissioner (Appeals) cannot be termed as discrimination. 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.



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 non-registration. The case in hand is on better footing as the respondent e-filed tax returns at the appellate stage and complied with the requirement of compulsory registration.

14. In view of the above the Commissioner (Appeals) has not committed any error in exercising discretion in favour of the respondent.

15. 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.12.07.2018

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Copies Supplied to:

- 1) The Assistant Commissioner, SRB, Karachi.
- 2) The Respondent through Authorized Representative.
Copy for Information.
- 3) The Commissioner Appeals, SRB.
- 4) Guard File.
- ✓ 5) Office File.