

(Quard face)

BEFORE THE APPELATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

SB-I

APPEAL NO. AT-42/2018

M/s. Reliance Commercial Associates.....Appellant

Versus

Assistant Commissioner, SRB, Karachi and  
another.....Respondents

Date of Filing: 25.06.2018

Date of hearing: 29.08.2018

Date of Order: 06.09.2018

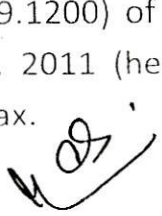

Mr. Mohammad Yousuf, Advocate for Appellant

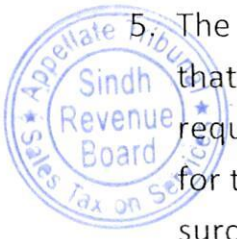
Ms. Pirah Ashfaq, AC-SRB for Respondent.

ORDER

**Justice<sup>®</sup> Nadeem Azhar Siddiqi:** This appeal has been filed by the appellant challenging the Order-in-Appeal No.77/2018 dated 21.05.2018 passed by the Commissioner (Appeals) in Appeal NO. 265/2016 confirming the Order in Original No. 746/2016 dated 10.08.2016 passed by the Assistant Commissioner, Unit 26 (Ms. Rafia Urooj), SRB, Karachi.

1. The facts of the case as mentioned in the Order-in-Original are that the Appellant is a service provider in the category of "Indenter" (tariff heading 9819.1200) of the Second Schedule of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) chargeable to Sindh sales tax.

2. It was alleged in the order in original that from the data received from M/s State Bank of Pakistan regarding foreign exchange earned by indenters from principals on Form/Appendix No.V-97 of Foreign Exchange Manual for the tax periods from July, m2015 to December, 2015, shows that the appellant receiving remittance in foreign currencies which is the value of service for the purpose of calculation of Sindh Sales Tax. It was further alleged that the appellant has received US\$29,196.80 upon which sales tax come to Rs.431,237/=. It was also alleged that the appellant has provided service without getting registration from SRB and has not paid the due tax of Rs.431,237/= and has also failed to file monthly sales tax returns.
3. A show-cause notice dated 20.14.2016 was issued to the appellant to explain as to why the sales tax on indenting service amounting to Rs.431,237/= may not be assessed and recovered from it along with penalties and default surcharge.
4. The appellant in reply to shoe cause notice has submitted that the appellant along with others file Suit No.1050/2016 in the High Court of Sindh and that the matter of taxation on intenders is under discussion between SRB and Karachi Chamber of Commerce and Industries (KCCI) and the matter was sent to Chief Minister of Sindh for directions/decision in the matter.
5. The Assessing Officer after hearing passed assessment order holding that the appellant is providing taxable service of indenting and is required to get registration and is liable to pay sales tax of Rs.431,237/= for the tax periods from July, 2015 to December, 2015 along with default surcharge and to file e-returns for the said tax periods. The Assessing Officer has also imposed penalties for various offences provided under section 43 of the Act amounting to Rs.3,774,193/=. 
6. The said order of the Assessing Officer was challenged by the appellant by way of filing appeal before the Commissioner (Appeals), who

*W. S. I.*

dismissed the appeal for non-prosecution, hence this appeal before this forum.

7. Mr. Mohammad Yusuf learned Advocate for the appellant submitted that the appeal was dismissed by Commissioner (Appeals) for non-prosecution on the ground of absence of appellant and its representative before the Commissioner (Appeals), but this is not fact and the delay in deciding the appeal cannot solely be attributed towards the appellant and that sufficient material was available with the Commissioner (Appeals) to decide the appeals on merits. He also submitted that this is the first appeal of its kind and the Commissioner (Appeals) subsequent to this order has heard about 20 appeals and reserved the same for order for deciding the same on merits. He then submitted that Commissioner (Appeals) has no power to dismiss the appeal on non-prosecution.

8. Ms. Pirah Ashfaq confirmed that other appeals of same nature are pending before Commissioner (Appeals) and was reserved for orders. She then submitted that the basic plea of the appellant is that the service provided by the appellant is not taxable under tariff heading 9819.1200 (Intenders). She then submitted that the appellant should request the Commissioner (Appeals) to attach this appeal with other appeals. He then submitted that Commissioner (Appeals) has to decide the appeal within 120 days and since the appellant was not appearing the appeal was rightly dismissed for non-prosecution.

9. Mr. Muhammad Yousuf advocate in rebuttal submitted that even written arguments were filed before Commissioner (Appeals) regarding the non-taxability of Indenters under the Act of 2011, which were ignored. He then submitted that the decision by Commissioner (Appeals) in the case was earlier and after dismissal the request for consolidation has no merits.

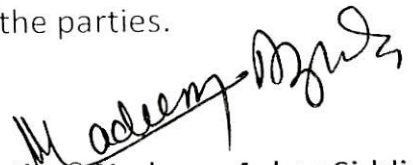
*Mos*

10.I, have heard the learned representative of the parties on point of dismissal of appeal in non-prosecution. I will first decide this issue and if required will hear the parties on the merits of the case.

11.From the arguments it appears that sufficient material was available with the Commissioner (Appeals) to decide the same on merits. The principles of equity, justice and fair play require that as far as practicable the cases should be decided on merits. The superior Courts in various pronouncements have held that law favors adjudication on merits and dismissal for non-prosecution is an exception and not a rule. This appeal is first of its kind and the case of first impression and the Commissioner (Appeals) on the basis of grounds of appeals and written arguments filed by the appellant can easily decide the appeal on merits. Furthermore another twenty appeals of similar nature are pending before the Commissioner (Appeals) and were reserved for orders. In the judgment reported as *Imtiaz Ahmad Versus Ghulam Ali*, PLD 1963 Supreme Court 382 the Honorable Supreme Court has held that "..... *the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on ground of public policy.....Any system which by giving effect to the form and not the substance defeats substantive rights (and) is defective to that extent.*"

12.In view of the above discussion the order in appeal is set aside. The case is remanded to the Commissioner (Appeals) to decide the same on merits after hearing the parties along with other appeals reserved for order.

13.The appeal is disposed of in the above terms. Copy of order to be supplied to the learned representatives of the parties.

  
(Justice Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi: Dated: 06.09.2018

Certified to be True Copy

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

4/5

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.

