

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

**BEFORE SINGLE BENCH-IV**

**Appeal No. AT-<sup>43</sup>46/2018** *ms*

M/s Paragon Gym ..... Appellant

VERSUS

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

Mr. Nadeem Iqbal, Advocate ..... For the Appellant

None present for the Respondent

Date of hearing 03.07.2018

Date of Order 04.07.2018

**ORDER**

**Agha Kafeel Barik:** This appeal has been filed against an appellate order of Commissioner (Appeals) dated 28.05.2018, whereby he dismissed tax payer's appeal for non-prosecution.

The facts of the case are as under:

2. The Deputy Commissioner (Unit-19), SRB after issuing a Show Cause Notice on 17.03.2016, to which there was no response even after granting opportunity for 11 times to appear and explain his case, the AC-SRB passed order under Section 24B of Compulsory Registration also imposed penalty of Rs.100,000/- under Section 43(1).

3. The appellant aggrieved of this treatment filed appeal before Commissioner (Appeals). However, the Commissioner (Appeals) after fixing appeal for hearing for 14 times dismissed it for non-prosecution on 28.05.2018. Hence this appeal before us.

4. While Mr. Nadeem Iqbal Advocate and Authorized Representative of the appellant appeared before us, none attended for the department SRB.

5. The learned AR submitted that firstly it was not a gym or health club as defined under Section 2(50) which would fall under tariff code 9821.1000 and in fact it was only a swimming pool which was providing services to general public on commercial basis but same did not fall in the ambit of SST under tariff code 9821.1000. Hence its registration under Section 24 B and penalty of Rs.100,000/- under Section 43(1) was quite illegal. He also stated that every time he received a notice from AC-SRB and subsequently from Commissioner (Appeals) he sent an adjournment application. Even on the date of last hearing and order by Commissioner (Appeals) on 28.05.2018 he had sent an application for adjournment. He filed copy of the said letter dated 28.05.2018 received in SRB on the same date as evidence. He further stated that a separate Show Cause Notice should have been given before imposing of penalty which was not

done. He argued that order in original was passed without appreciating the facts of the case and that while order of the Assistant Commissioner was arbitrary the Commissioner (Appeals) had passed exparte order, dismissing appeal for non-prosecution which was not a judicious order. He argued that even in the event of passing an exparte order the decision be made on the merits which should not be ignored in exparte order. He cited a judgment of the Sindh High Court reported as 90 Tax 276 / 2004 PTD 2839 in the case of Saleem Salamat vs. S.O. Wealth Tax in support of his arguments.

6. The impugned orders of the Commissioner (Appeals) and Deputy Commissioner, SRB were perused in the light of the argument of the learned AR and my findings are as under.

- i. The Deputy Commissioner, SRB in his Show Cause Notice on 17.03.2016 has simply stated that M/s Paragon Gym is engaged in providing or rendering services which are covered under the service category of 9821.1000 Health Care Centre, Gym or Physical Fitness Center etc. But he has not placed on record anything to substantiate his statement. There is no documentary evidence or inquiry report to substantiate his allegation as per his show cause notice, in the absence of which the learned AR simply denies falling in the tariff code 9821.1000 for health care centre etc., stating that it is only a public swimming pool.
- ii. There is a letter of adjournment addressed to Commissioner (Appeals) filed by the learned AR on 28.05.2018, duly received in the SBR on the same date i.e. 28.05.2018 but the Commissioner (Appeals) has not passed any order on it, ignoring it totally.
- iii. The Commissioner (Appeals) could have passed an order on merits instead of "Dismissed for Non-Prosecution" which he did not.

7. In view of the above findings I deem it fit to set aside the impugned order of the Commissioner (Appeals) and remand the case to the concerned Deputy Commissioner, SRB with the direction to conduct an inquiry into the actual nature of services being rendered by the appellant and place on record necessary evidence in support of his claim that the appellant falls under tariff heading 9821.1000. Thereafter he should confront the appellant with such evidence through a fresh Show Cause Notice and pass a judicious order.

8. Appeal is disposed of as above.

(AGHA KAFEEL BARIK)  
TECHNICAL MEMBER

Karachi

Dated:04.07.2018

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.

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REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD