

(Guard file)

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE
BOARD

Appeal no: 53/2018

M/s ALLE NORA by ALIA TIPU..... Appellant

VERSUS

Deputy Assistant Commissioner (Unit-19) SRB..... Respondent

Mr. Nadeem Iqbal Advocate..... For Appellant

Ms. Rafia Urooj A.C S.R.B.:..... For Respondent

Date of hearing: 02-10-2018

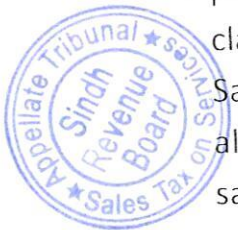
Date of order: 17-10-2018

ORDER

Mr. Muhammad Ashfaq Balouch:

Present appeal has been file against the order of Learned Commissioner (Appeals), bearing appeal No 129/2016 passed in Order In Appeal No. 112/2018 dated 28th-June-2018 (hereinafter referred to as OIA), whereby Order in Original bearing No. 214/2016 dated 06-04-2016 (hereinafter referred to as OIO) passed by Deputy Commissioner (the then unit No.19) was confirmed.

(2). Brief facts as disclosed in the OIA are that appellant has been providing and rendering services falling under category of "Beauty Parlor" classified under tariff heading 9810.0000 of the Second schedule of Sindh Sales Tax on Services Act 2011(hereinafter referred to as Act 2011). The allegations against the appellant is that appellant failed to file monthly sales tax return for the tax period from January 2015 to January 2016. After a due process of show cause notice to the appellant, Learned Deputy Commissioner SRB (unit-19) passed the Ex-Party order and imposed the penalty of Rs: 130,000/- as against offence No.2 of the table of section 43 of the Act 2011.



(3). Present appellant felt aggrieved by the OIO filed appeal before the Learned Commissioner (Appeals). The Learned Commissioner (Appeals) SRB Karachi was pleased to dismissed appeal on 28-06-2018 for non-prosecution and confirmed the order of concerned Deputy Commissioner SRB.

(4).Mr. Nadeem Iqbal Advocate for appellant submitted that appellant is running beauty parlor and was compulsory registered by the department. Learned Counsel further argued that on 28-06-2018 he was busy in Appellate Tribunal Inland Revenue, Karachi in sales tax appeal no. STA 150/KB2012. Therefore, adjournment application was submitted before the department which was duly supported with the photocopy of notice for hearing before the Appellate Tribunal Inland Revenue, Karachi. Said application was neither rejected nor granted by the Learned Commissioner (Appeals) and appeal was dismissed for non-prosecution.

(5). Departmental representative Ms. Rafia Urooj, Assistant Commissioner SRB has stated that as per OIO the appellant was served with show cause notice dated 25-02-2016, thereafter, matter was fixed for hearing on 14-03-2016 and 24-03-2016 but appellant neither appeared nor submitted reply therefore, ex-party order was passed and penalty of Rs. 130,000/- in term of sub section 2 of section 43 of Act was imposed. Appellant filed the appeal before the Learned Commissioner (Appeals), which remains pending for the 755days during this period 23 times matter was adjourned and appellant has taken adjournment of 665 days. When on 28-06-2018 appellant failed to appear before the Commissioner (Appeals), appeal was dismissed for non-prosecution. The Learned AC further stated that sufficient opportunities were provided to the appellant but appellant side failed to appear before the Learned Commissioner (Appeals) and appeal was rightly dismissed for non-prosecution.

(6). I have considered the arguments of both the parties and perused the record.



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(7). The contention of appellant is that on 28-6-2018 adjournment was requested on the ground that Learned Counsel for the appellant was busy before the Tribunal Inland Revenue, Karachi in Sales Tax Appeal no. 150/KB-2012. Adjournment application in present appeal was submitted before the Concerned Authority SRB. The Learned Counsel for the appellant in support of his contention filed photocopy of said adjournment application, having receiving seal of Sindh Board of Revenue, Karachi.

(8). In order to clarify the position regarding adjournment application dated 28-06-2018 report was called form Department. On 02-10-2018. Ms, Rafia Urooj Assistant Commissioner (Unit-13) submitted report and admitted that said adjournment application was received on 28-06-2018, on the reception of Sindh Revenue Board, Karachi but not in the office of Commissioner (Appeals).

(9). From the above mentioned submission of both the parties, record and aforementioned report it transpired that on 28-6-2018 appeal was dismissed for non-prosecution. It is worth mentioning that Learned Counsel for the appellant has brought on record photocopy of adjournment application duly supported with the photocopy of notice for hearing of STA 150/LB 2012 by Appellate Tribunal Inland Revenue Karachi, on 28-06-2018. But Learned Commissioner (Appeals) has not mentioned in his OIA regarding this fact of adjournment application and faith of said application.

(10). As it is already mention supra that report was called from department regarding submission of adjournment application. Department in its report admitted that on 28-06-2018 adjournment application was receipt at the reception of Sindh Revenue Board, Karachi.

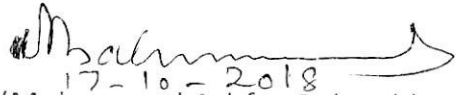
(11). This admission on part of department clearly reveals that adjournment applications was filed by the appellant after receiving the said application, it was duty of department to place the same before the concerned Commissioner (Appeals). But department has failed to



discharged its duty, which resulted in dismissal of appeal for non-prosecution.

(12). In view of above circumstances when appellant filed the adjournment application, without deciding the faith of the same appeal was dismissed for non-prosecution. Hence, it will be just and proper to set-aside the impugned order which was not passed on merit.

(13). Consequently, the order of Learned Commissioner (Appeals) is hereby set-aside and matter is remanded back to commissioner (Appeals) for deciding it on merit within the period of 60 days after receiving present order.


17-10-2018
(Muhammad Ashfaq Balouch)

Judicial Member

Copies Supplied to:

1. The Appellant through Authorized Representative.
2. The Deputy Commissioner (Legal) SRB
3. The Assistant Commissioner, SRB for compliance
Copy for information
4. The Commissioner Appeals, SRB
5. Guard File
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