

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT- 82/2018

M/s Health Care ProductAppellant

Versus

The Commissioner (Appeals), SRB,
Karachi.....Respondent

Mr. Mohammad Yousuf, Advocate for Appellant.

Ms. Shumaila Yar Muhammad, AC-SRB for Respondent.

Date of Filing Appeal: 12.10.2018

Date of hearing: 03.0-1.2018, 07.01.2018 and 8.01.2018

Date of Order: 27.02.2019

ORDER

Justice ® Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal No.178/2018 dated 27.09.2018 passed by the Commissioner (Appeals) in Appeal No. 135/2018 filed by the Appellant against the Order-in-Original No. 516/2018 dated 17.05.2018 passed by the Assistant Commissioner (Ms. Rafia Urooj) SRB, Karachi.



01. The facts of the case as mentioned in the Order-in-Original are that the appellant is a registered person with SRB under Tariff Heading 9819.1200 (Indenter) of the 2nd schedule of the Act and chargeable to Sindh Sales Tax on Services effective from 01.07.2015 @ 14%. It was also

M. O. S.

stated that the appellant being a registered person is required to charge and collect Sindh sales tax on services on their taxable services and deposit the amount with SRB and to file true and correct Sindh Sales tax returns.

02. It was alleged in the Order-in-Original that during scrutiny of records as maintained with SRB it was observed that the registered person had failed to make payment and file monthly sales tax returns for the tax periods from April, 2017 to October, 2017. It was also alleged that the position was shared with the appellant vide SRB letter dated 26.07.2017 and 06.09.2017 requiring the appellant to make payment and to e-file monthly sales tax returns for the tax periods April, 2017 to July, 2017.

03. A show-cause notice dated 26.11.2017 was served upon the appellant to explain as to why penal action under Serial No. 2 and 3 of Table of Section 43 of the Act should not be taken.

04. The appellant filed its written reply dated 02.10.2017 through M/s Yousuf Law Associates. In the reply it was stated that the appellant is engaged in indenting business, contribute richly towards the exchequer of Pakistan by earning precious foreign exchange and paying direct taxes in the shape of direct taxes. Some other pleas were also taken mentioned in sub-paras of para 2 of the order in original. It was also stated that services rendered by indenters outside Pakistan does not come under the ambit of Sindh sales tax on services.

05. The Assessing Officer after hearing passed Order of imposing penalty of Rs.634,660/= under Serial No. 2 of Table of Section 43 of the Act and Rs.641,660/= under Serial No. 3 of Table of Section 43 of the Act.

06. The appellant challenged the said order by way of filing appeal before the Commissioner (Appeals), who maintained the order to the extent of penalty under Serial No.2 of section 43 of the Act and set aside the penalty under Serial No. 3 of Table under section 3 of the Act.

07. On 03.01.2019 Mr. Mohammad Yousuf Advocate for the appellant submitted that Tariff Heading 9819.1200 (Indenters), sub section (51A) of section 2 of the Act was effective from 10.07.20.15 and rule 41B of the Sindh Sales Tax on Services Rules, 2011 was effective from 4th



M. Yousuf

August, 2015. He then referred section 2 (51A) of the Act and submitted that all principals of the appellants are foreign entities having no office or place of business in Sindh and are not subject to laws of Sindh or Pakistan and the Appellant is not performing any act as provided in the Section 2(51A) of the Act, 2011. His further contentions are as under. In addition he submitted that the penalty under Serial No. 2 of Section 43 of the Act was imposed by the Assessing officer and confirmed by the Commissioner (Appeals) in ignorance and in violation of the earlier orders of this Tribunal and the officers by not following the orders of the Tribunal has committed misconduct and are liable to be dealt with in accordance with law.

08. On 08.01.2019 Ms. Shumaila Yar Muhammad the learned AC submitted that the Indenting Service has been initiated in Sindh as the service provider is located in Sindh and the liability is upon the service provider to deposit tax under section 3 read with section 9 of the Act. She further submitted that penalty was properly imposed in accordance with section 43 of the Act and the Commissioner (Appeals) has rightly confirmed the same. She also submitted that an order in original No. 698/2016 dated 18.07.2016 was passed against the appellant under section 24B of the Act for compulsory registration of the appellant and assessment order in the sum of Rs.14,011,547/= along with default surcharge and penalties, and that order attained finality and has not been complied with.
09. We have heard the learned representatives of the parties and perused the record made available before us.



10. The main contention of the learned advocate for the appellant is that the order imposing penalty is against the earlier orders of the Tribunal and is not sustainable in law. The AC has not denied the earlier orders of the Tribunal on the subject.

11. In the earlier order in Appeal No. 92/16 SLINGSHOT VS AC dated 25.01.2017 a DB of this Tribunal has held as under:

"It is noted that in this case the default of non-filing of monthly returns pertains to 13 returns for the months of December 2014 to February 2016. Penalty @ Rs.10,000/- for each not filed return works out to Rs.130,000/- in

Handwritten signature and initials in blue ink.

aggregate. However, the Assistant Commissioner multiplied the number of returns with the number of months for which it continued and imposed penalty of Rs.1,206,000/- which is too harsh and excessive. The intention of legislation in the enactment of penal provision is always deterrent and corrective in nature. Here also the phrase per month appears to be related to a return of sales tax which is to be filed every month. It is now well settled principle of law that if there appears any ambiguity in any provision of law the same has to be resolved in favor of tax payer as held in M/s Mehran Associates Versus Commissioner Income Tax, Karachi 1993 SCMR page 274. It was also held by Sindh High Court in M/s Citi Bank versus Commissioner Inland revenue that if two reasonable interpretations are possible, the one favoring the tax payer will be adopted. Multiplying the amount of penalty with number of months will be illogical and against the spirit of law”.

In view of the above observations we conclude as under:

- a)
- b)
- c) As regards penalty of Rs.1,206,000/- in view of our above observation we reduce it to Rs.130,000 only.

The impugned order is modified and appeal is allowed to that extent.

18. This Tribunal in another Appeal No. 47/2018 M/s Fumicon Vs AC-SRB has held as under:

“Furthermore the penalty under serial No.2 of the Table under section 43 of the Act has been erroneously imposed against the provision of law and against the earlier order of Tribunal in Appeal NO. AT-92/16 (SLINGSHOT VS AC) decided on 25.01.2017 by DB-1 of this Tribunal. It is noted that in this case the default of non-filing of monthly returns pertains to 07 returns and Penalty @ Rs.10,000/- for each not filed return works out to Rs.70,000/- in aggregate. However, the Assistant Commissioner multiplied the number of returns with the number of months for which it continued and imposed penalty of Rs.647,994/- which is too harsh and excessive and is not tenable. The operative part of the order of Tribunal is reproduced as under:

“Besides, the learned counsel took the plea that the quantum of penalty imposed by the A.C. was not only harsh but unjustified and based on lack of proper interpretation of the penal provision. He argued that section 43(2) provided Rs.10,000/- only one time for an offence whereas the A.C. had compounded the penalty with every month for the whole period of default of non-filing of returns for 13 months, December 2014 to February 2016. It is



A handwritten signature in blue ink, appearing to be 'M. J. R.', written over the bottom part of the text.

noted that in this case the default of non-filing of monthly returns pertains to 13 returns for the months of December 2014 to February 2016. Penalty @ Rs.10,000/- for each not filed return works out to Rs.130,000/- in aggregate. However, the Assistant Commissioner multiplied the number of returns with the number of months for which it continued and imposed penalty of Rs.1,206,000/- which is too harsh and excessive. The intention of legislation in the enactment of penal provision is always deterrent and corrective in nature. Here also the phrase per month appears to be related to a return of sales tax which is to be filed every month. It is now well settled principle of law that if there appears any ambiguity in any provision of law the same has to be resolved in favor of tax payer as held in M/s Mehran Associates Versus Commissioner Income Tax, Karachi 1993 SCMR page 274. It was also held by Sindh High Court in M/s Citi Bank versus Commissioner Inland revenue that if two reasonable interpretations are possible, the one favoring the tax payer will be adopted. Multiplying the amount of penalty with number of months will be illogical and against the spirit of law".

1. Both the above orders of the Tribunal are in the knowledge of the Assessing Officer as well as Commissioner (Appeals) and are still holding the field and has not been set aside by the Honorable High Court in referential jurisdiction and is binding upon the Commissioner (Appeals) and Assessing Officers. Any order/decision of the Assessing Officer and the Commissioner (Appeals) cannot be sustained if the same is against the order/decision of Tribunal. The Officers should follow the orders of Tribunal in later and sprit.
2. In view of above, this appeal is allowed and the penalties imposed by the Assessing Officer under Table 2 of section 43 of the Act are setaside. The copy of this order be provided to the learned representatives of the parties

(Agha Kafeel Barik)
TECHNICAL MEMBER

(Justice Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi

Dated: 27.02.2019

Certified to be True Copy

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

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.

