

**BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI**

**SB-I**

**APPEAL NO. AT- 02 /2019**

M/s Sabs The Salon .....Appellant

**Versus**

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

Date of Filing of Appeal

Before Commissioner (Appeals): 13.01.2016

Date of Receiving Appeal

From Commissioner (Appeals): 14.01.2019

Date of hearing: 04.12.2019 & 17.12.2019

Date of Order: 03.01.2020

Mr. Haroon Aziz, ITP and Mr. Fawad Yousuf, ITP for Appellant

Ms. Kaleemullah, AC-DR and Mr. Hasan Abbas, AC - SRB for Respondent

**ORDER**

**Justice ® Nadeem Azhar Siddiqi:** This appeal has been initially filed by the appellant challenging the Order-in- Original (hereinafter referred to as the OIO) No. 641/2015 dated 10.12.2015 passed by the Assistant Commissioner (Ms. Umi Rabbab), Unit-19, SRB, Karachi before Commissioner (Appeals), SRB who has transferred the same to the Tribunal under section 59 (7) of the Sindh Sales Tax on Services Act, 2011 for deciding the same in accordance with law.

02. The facts of the case as mentioned in the OIO are that the appellant was registered with SRB as service provider under Tariff Heading 9810.0000 (services provided or rendered for personal care by beauty parlors,



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beauty clinics, slimming clinics or centers and others) of the Second Schedule to the Sindh Sales Tax on Service Act, 2011 (herein after referred as the Act), chargeable to Sindh sales tax (SST) @ 10% effective from 1<sup>st</sup> July, 2013.

03. It was alleged in the OIO that the monthly sales tax returns filed by M/s Millennium Entertainment Ltd. (Millennium) and Hum Network Limited (HUM) with SRB revealed that the appellant rendered/provided taxable services of Rs.3,598,000/= and Rs.2,658,333/= involving SST of Rs.359,800/= and 275,000/= respectively during the tax periods of December-2013, February-2014, to June-2014, October-2014 to December-2014, January-2015 to July-2015. It was further alleged that the appellant charged and collected the SST amounting to Rs.579,800/= (SST of Rs.55,000/= was withheld by M/s HUM), but the appellant failed to deposit the same with SRB. The appellant was served with letter dated 31.08.2015 for payment of SST collected from service recipient, but it failed to deposit the same.

04. The appellant was served with show-cause notice (SCN) dated 22.09.2015 to explain as to why tax liabilities of Rs.579,800/= may not be assessed under section 23 read with section 47 of the Act along with default surcharge under section 44 of the Act and penalties under serial No. 2 and 3 of the Table of Section 43 of the Act. The representative of the appellant vide letter informed the department that the appellant had filed constitution petition before the Honorable High Court, which had restrained the SRB from levying SST and that the levy on beauty parlor was illegal and issuance of SCN was tantamount contempt of court.



05. The Assessing Officer (AO) in the OIO had mentioned that the Honorable High Court has restrained the Department from taking any coercive action against the appellant for the recovery of the impugned demand. Finally the AO passed OIO determining the SST of Rs.579,800/= along with default surcharge and penalty of Rs.1,545,400/= under serial No. 2 of the Table of Section 43 of the Act for non-filing of sales tax returns for the tax periods from February-2014 to June-2015. The AO also imposed

penalty of Rs.10,000/= per month or fraction thereof or five percent of the total tax payable whichever was higher under serial No. 3 of the Table of Section 43 of the Act till the sales due was paid alongwith default surcharge.

06.The Appellant challenged the Order-in-Original by way of filing appeal before the Commissioner (Appeals) who instead of deciding the same has transferred the appeal to this Tribunal taking benefit of section 59 (7) of the Act.

07. The learned representative of the appellant had filed working along with CPR of 8,479/- of the 5% of default surcharge of Rs.169,574/= during the pendency of appeal before the Commissioner (Appeals). The AC had admitted this fact before the Commissioner (Appeals) that the case was covered under clause 3 of the Notification and the amnesty applied.

08.Ms. Shafaq Noor, AC appeared before this Tribunal and disputed the working earlier submitted before the Commissioner (Appeals) and produced her own working. In the Reconciliation Report dated 15.04.2019 filed by the learned AC the SST of Rs.275,000/= in respect of HUM was reconciled and it was stated that the SST of Rs.55,000/= was withheld and deposited by HUM and SST of Rs.220,000/= was deposited by the appellant. However in case of Millennium it was stated that SST amounting to Rs.1,38,700/= was payable.

09. Mr. Hasan Abbas, AC submitted on 04.12.2019 that after reconciliation of disputed amount the tax payable was Rs.99,000/= on the value of service of Rs.990,000/= declared by M/s Millennium in its return for the month of December-2013. However, despite considerable efforts the same could not be reconciled and the appellant has failed to establish its contention that the invoices of various months were clubbed and declared in the monthly tax return of December-2013. In reply Mr. Fahad Yousuf, ITP for appellant submitted that though M/s Millennium had shown single entry of amount of Rs. 9,90,000/- but factually the service was provided during tax periods July, 2013 to December-2013 and payment was also received in part and not in lump



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sum. Moreover the amount was already reflected in the tax returns of relevant months.

10. Mr. Hassan Abbas, AC on 12.12.2019 argued that the dispute relating to payment of tax on value of Rs. 990,000/- as reported by M/s Millennium in its tax return for December, 2013 still remained. Whereas the contention of M/s Fawad for the appellant was that no such invoice was issued and M/s Millennium erroneously clubbed the amount of various invoices and had shown such consolidated amount in the tax return of December, 2013. He again filed a Re-conciliation Statement dated 12.12.2019 for the tax periods from December, 2013 to June, 2015 and submitted that the OIO was passed ;levying SST of Rs. 579,800/- along with penalties of Rs.1,545,400/- and default surcharge. He further submitted that out of Rs.579,800/- an amount of Rs. 275,000/= related to the account of HUM TV, which had deposited Rs. 55,000/- on account of withholding and remaining amount of Rs.220,000/- was deposited by appellant and there was no dispute in this regard. He then submitted that remaining amount of Rs. 359,800/= related to M/s Millennium out of which Rs. 138,700/- was deposited by appellant. However, the remaining amount of Rs.271,100/= was to be deposited by the appellant with penalties and default surcharge.

11. Mr. Fawad Yousuf for appellant submitted that as per the reconciliation filed by him on 04.12.2019 the appellant had deposited a sum of Rs.263,380/=. However if the tax on the value of Rs.990,000/= was deleted from the reconciliation of the department the actual amount of tax liability would work out to Rs.260,000/= showing that an excess amount of Rs.2,580/= was deposited. However, the AC has disputed the reconciliation filed by the appellant and submitted that the amounts shown in the re-conciliation dated 04.12.2019 could not be reconciled since the invoices shown in the returns and the invoices physically produced before him were not matching with the invoices shown in the returns. The Ac was directed to prepare a statement of deposit of tax by the appellant which was filed showing balance e of tax of Rs.187,240/=.

12. Mr. Muhammad Fawad, ITP for appellant on 17.12.2109 filed Reconciliation Statement showing that the appellant had paid excess tax of Rs. 45,530/- was deposited. He submitted that during the tax periods from July, 2014 to August, 2016 the appellant had deposited tax of Rs.



58,980/- which was not considered by the AC in his re-conciliation statement. He further submitted that the service recipient M/s Millennium had wrongly reported in its monthly tax return of December, 2013 an amount of Rs. 990,000/- involving SST of 99,000/-. However the amount was already reflected in the monthly tax returns of appellant for the months of July- 2013 to December- 2013 under invoice number 401 to 406 and once this amount was deleted from the reconciliation of the AC the amount of tax payable would work out to Rs. 88,250/-.

13. The AC submitted that the appellant in its Reconciliation Statement had included the SST paid during tax periods from July, 2014 to September, 2014, although these tax periods were not confronted/included in the SCN and the tax of Rs.58,980/= paid during those tax periods was not adjustable. He contended that despite sending letter dated 13.12.2019 to the representative of appellant the tax returns of Millennium were not revised, hence relief in adjustment of tax could not be provided to the appellant on account of alleged duplication of invoices. He submitted that in its letter M/s Millennium has stated that though a sum of Rs.990,000/- was reflected in the sale tax return of December, 2013 but no sales tax was either charged by the service provider nor any input tax was claimed by the recipient. Thus the appellant was not entitled to claim the adjustment of tax of Rs.99,000/- as the same was not paid to SRB.

Heard the learned representatives of the parties, perused the record made available before me and the various Reconciliation Statements filed by the representatives of the parties.

14. The OIO was passed in the sum of Rs. 579,800/= out of which Rs.220,000/= pertained to HUM and Rs.359,800/= pertained to M/s Millennium/=. The appellant deposited an amount of Rs.220,000/= whereas Rs.55,000/= were deposited by Hum. The remaining amount of SST on account of Millennium was worked out to Rs.359,800/=. The appellant deposited an amount of Rs.172,550/= out of Rs.359,800/= thus the balance payable tax was Rs.187,250/= along with default surcharge and penalties for late filing of returns and non-payment SST. The contention of the appellant was that an amount of Rs.990,000/= involving SST of Rs.99,000/= was wrongly reflected by M/s Millennium in its monthly tax return for December, 2013 and the same was liable to be deducted from the balance amount of SST of Rs.187,250/= leaving a balance of Rs.88,250/=. The appellant further claimed adjustment of



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Rs.58,980/= relating to the tax periods July-2014 to September-2014, although these tax periods were not part of the SCN.

15.The Final Reconciliation Statement signed by both the learned representatives of the parties reflected the following position:-

Sabs the Saloon payment Against Millennium Entertainment (Pvt.) Ltd.					
Tax Period	value of services	SST Involved	Invoice No.	SST Withheld	SST Deposited with return
Dec-13	-	-	-	-	-
Feb-14	246,400	24,640	1	-	24,640
Mar-14	420,200	42,020	2	-	42,020
Apr-14	235,400	23,540	3	-	23,540
May-14	275,000	27,500	4	-	27,500
Jun-14	-	-	-	-	-
Oct-14	162,500	16,250	8	3,250	13,000
Nov-14	-	-	-	-	-
Dec-14	176,000	17,600	9	3,520	14,080
Jan-15	210,000	21,000	10	4,200	16,800
<b>Total</b>	<b>1,725,500</b>	<b>172,550</b>		<b>10,970</b>	<b>161,580</b>

Total confronted Amount		359,800
Total SST Paid		172,550
Short payment		187,250

The above statement reflected the correct position of the value of services provided by appellant and SST amount deposited by the appellant on account of M/s Millennium. A letter of M/s Millennium which was sent to Mr. Haroon Aziz was produced by the appellant which is reproduced as under:-

December 13, 2019  
Mr. HAROON AZIZ,  
Aziz Associates, 1/7-B,  
Muhammad Ali Housing Society,  
Karachi.

ATTN: Mr. Aziz

Certification regarding invoice # 405 amounting to Rs. 990,000/-

Dear Sir,

Reference is made to your letter dated 12<sup>th</sup> December, 2019 for the clarification of services provided to our company by M/s. SABS THE SALOON in the month of December, 2013 amounting to Rs. 990,000/- which has been declared by us in our monthly sales tax return e-filed with SRB for the month of December, 2-13 where in, our staff erroneously mentioned SST invoices No. 405 in Annexure-A of the said Return.

In this context we would like to clarify our position as under:-

1. That being registered service provider we are compelled to declare all the services received whether taxable or non-taxable in annexure-A of our monthly Sales Tax Returns e-filed with SRB.
2. That in the month of December-2013 we declared the total services provided by M/s. Sabs the Saloon from July, 2013 to December 2013 which stood at Rs. 990,000/- accordingly the same was reflected in Sales Tax Return of December-2013, though no sales tax was either charged by the service provider nor any input was claimed by our company. The invoices No 401 to 406 amounting to same Rs. 990,000/- filed in the return for the month of Feb' 2014 are duplicate invoices already filed through invoice no. 4-05 in the month of Dec' 2-13.
3. That in the month of February 2014 M/s. Sabs The Saloon provided Eight Sales Tax Invoices serially numbered from 401 to 407 and 409 the total amount of services against all these invoices comes to Rs. 1,606,000/-.
4. That it is further clarified that the amount of services against invoice # 401 to 406 stood at payment against all the above services have been made by us according to the payment schedule attached here with.

In the light of the above submissions and clarifications it is sincerely hoped that this would solve your purpose and meet the requirement of SRB as well.

Regards,

For Millennium Entertainment (Pvt.) Ltd.

17. In the above letter M/s Millennium had stated that the invoices No 401 to 406 amounting to Rs. 990,000/- filed in the return for the month of



February-2014 were duplicate invoices which were already filed through invoice No. 405 in the month of December-2013. Whereas the contention of the appellant was that factually the service were provided during tax periods July, 2013 to December-2013 and payment was not received in lump sum but was partly received and the same was already reflected in the tax returns of relevant months. There were contrary statement of the appellant and its service recipient. The appellant claimed that services amounting to Rs.990,000/= were declared in the months of July-2013 to December-2013 whereas M/s Millennium claimed that the invoices No 401 to 406 amounting to Rs. 990,000/- filed in the return for the month of February-2014 were duplicate invoices already filed through invoice No. 405 in the month of December-2013. The letter also stipulates that neither the tax was charged nor any input tax adjustment was claimed. This clearly showed that no tax was deposited with SRB and the appellant cannot claim adjustment of Rs.99,000/=. The appellant in the absence of revision of monthly tax returns has failed to establish that tax amounting to Rs.99,000/= were offered twice.

18.The appellant also claimed adjustment of Rs.58,980/= paid during the tax periods of July-2014 to September-2014 reflected in its Reconciliation dated 17.12.2019. Suffice to say that these tax periods were not part of the SCN and the deposit if any cannot be adjusted towards the tax periods involved in the SCN. The appellant has claimed adjustment of such amount to unjustly decrease the liability.

19.In view of the above discussions the appellant is liable to pay a sum of Rs.187,250/= on account of SST for the tax periods confronted in the SCN and mentioned in para 03 above along with the default surcharge. However, since the appellant already paid 5% of default surcharge of Rs.169,574/= amounting to Rs.8,479/= thus this amount is liable to be adjusted from the balance tax of Rs.187,250/=.

20.The penalties under serial No. 2 & 3 of the Table of section 43 of the Act were imposed without first establishing mensrea, willfulness and malafides. Moreover, there is no discussion on this account in the OIO which shows that without any independent determination it was taken for granted by the AO that the liability to pay penalty was a necessary consequence or corollary of non-filing of returns and non-payment of sales tax within stipulated period. It is also pertinent to mention that the



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amounts of penalties were not confronted in the OIO. Even the penalty imposed under serial No.3 of Table of section 43 of the Act was not calculated and mentioned in the OIO. Reference in this regard can be made to reported case of (i) BL I Pakistan Limited versus Government of Pakistan, 2017 PTD 2050 wherein it was held that for levying a penalty an exercise had to be carried out to determine whether or not non-filing of withholding statement was deliberate and done with malafide intention. For the purpose of levy of penalty mensrea is an essential ingredient, which has to be established in terms of the judgment of the august Supreme Court of Pakistan rendered in a case cited at D.G.Khan Cement Company Limited and others versus Federation of Pakistan and others, 2004 SCMR 456. (ii) Deputy Collector Central Excise and Sales Tax versus ICI Pakistan, Lahore 2006 PTD 1132 wherein the Honorable Supreme Court has held that liability being not automatic would be determined by the appropriate authority as to whether or not there was any reasonable ground for default in payment of sales tax which could be considered to be willful and deliberate. (iii) Commissioner Income Tax versus HBL, 2007 PTD 901 wherein it was held that nature of penal provisions being quasi criminal existence if mensrea is mandatory for levying penalty.

21. The penalty under serial No.2 of Table of section 43 of the Act was imposed for non-filing of returns for the tax periods from July, 2014 to September, 2014 although these tax periods were not part of the SCN. No penalty was imposed in respect of non-filing of the return for the tax period December, 2013. The penalty under serial No.2 of Table of section 43 of the Act was calculated and imposed against the provision of law and Order of this Tribunal in the case of M/s Slingshot (Pvt.) Limited versus Assistant Commissioner, (Unit-21), SRB, Karachi, Appeal No. AT-92/2016. The operative part of which is reproduced below.



*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 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*

*M.S.*

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.

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

22. In another Appeal No. 48/2018 M/s Fumican Services versus Assistant Commissioner, SRB decided on 16.10.18 relying upon the earlier Order of Sling Shot,

*"It is noted that in this case the default of non-filing of monthly returns pertains to 11 returns and Penalty @ Rs.10,000/- for each not filed return works out to Rs.110,000/- 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.1,315,654/- which is too harsh and excessive and is not tenable".*

23. The above Orders of the Tribunal are final as provided under sub-section 8 of section 62 of the Act and still holding field and have not been set aside by the Honorable High Court in referential jurisdiction and are binding upon the 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 Department should follow the orders of Tribunal in letter and spirit. Apparently the AO has taken the case very casually

24. In view of above, this appeal is partly allowed and the penalties imposed by the Assessing Officer under Table 2 and 3 of section 43 of the Act are set aside. The appellant is liable to pay the tax of Rs.187,250/= after adjusting an amount of Rs.8,479/= along with default surcharge if any.



M.S.

25. The copy of this order may be provided to the learned representatives of the parties.

Karachi.  
03.01.2020

  
(Justice<sup>®</sup> Nadeem Azhar Siddiqi)  
Chairman

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.

Certified to be True Copy

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on 05/01/2020  
Registrar

Order Dispatched on 06/01/2020  
Registrar