

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

SB-1

APPEAL NO. AT-18/2019

M/s Hi Tech Engineers.....Appellant

Versus

Commissioner Appeals, SRB, and another.....Respondent

Mr. Syed Hafiz Ali, Advocate along with Mr. Syed Wajahat Ali, Advocate for Appellant

Mr. Liaquat Ali Bajeer, AC SRB for Respondent

Date of filing of Appeal: 19.02.2019

Date of hearing: 16.04.2019

Date of Order: 14.06.2019

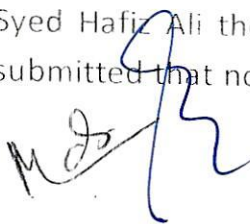
ORDER

Justice ® Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal No.237/2018 dated 19.12.2018 passed by the Commissioner (Appeals-1) in Appeal No. 366/2018 filed by the Appellant against the Order-in-Original No. 7834/2018 dated 18.09.2018 passed by the Assistant Commissioner (Mr. Liaquat Ali Bajeer), SRB, Karachi.



Has

01. The facts as stated in the order-in-original are that the appellant is reported to be engaged in providing and rendering taxable services of "Workshops for electric or electronic equipment or appliances etc., including computer hardware", Tariff Heading 9820.3000 of the Second Schedule of Sindh Sales Tax on Services Act, 2011 (herein after referred to as the Act) subject to levy of Sindh sales tax with effect from 01.07.2013.
02. The allegations against the appellant in the order in original are that the appellant was advised vide SRB Letter dated 30.07.2018 to get voluntarily registration under section 24 of the Act. However, a show-cause notice dated 08.08.2018 was issued to the appellant to explain as to why appellant should not be registered compulsorily under section 24B of the Act and penalty as provided in section 43 (1) of the Act may not be imposed.
03. As per the order in original neither the appellant filed written response nor appeared for hearing on 15.08.2018.
04. The Officer, SRB passed order for compulsorily registration of the appellant under section 24B of the Act and imposed penalty of Rs.10,000/- under serial No.1 of Table under section 43 of the Act for failing to make an application for registration before providing taxable services. The Officer also imposed penalty of Rs.100,000/= for non-compliance of the notice of compulsory registration.
05. The appellant has challenged the order in original before Commissioner (Appeals) who maintained the order in original to the extent of compulsory registration and payment of Rs.10,000/= on account of penalty.
06. The appellant has challenged the said order in appeal before this forum.
07. Syed Hafiz Ali the learned Advocate for the appellant at the very outset submitted that no show-cause notice was issued as mentioned in the order



in original. He submitted that in his letter dated 25.02.2019 he has informed the Registrar of the Tribunal that no show cause notice was issued by the AC. He then submitted that the appellant is a small shopkeeper and his total turnover for the year 2018 was Rs.1,635,850/- (total sales and receipts) and according to SRB Notification SRB 3-4/7/2013 dated 18.06.2013 if the service receipts under tariff heading 9820.3000 do not exceed 3.6 million same are exempt from payment of Sindh Sales Tax on Services and neither the registration is required nor filing of monthly tax returns are necessary.

8. Syed Hafiz Ali for appellant then submitted that the appeal has been filed to challenge compulsory registration without notice of a person who does not come within the ambit of person providing taxable services. The learned Advocate placed on record the Notification Dated 18.06.2013, Income Tax Return for 2018, and Bank Statement.

9. Mr. Wajahat Ali for appellant further submitted that consequence of compulsory registration is that appellant has to file monthly tax returns and the appellant being a poor electric appliances mechanic is not in a position to e-file monthly tax returns. He also submitted that Commissioner (Appeals) fell in error in directing the appellant to file returns from July, 2014 the period prior to registration. He submitted that as per section 30 only the registered person is required to e-file monthly sales tax returns. He then referred to Notification dated 18.06.2013 (Page 407 of 08th edition) and submitted that the appellant is required to file yearly return if the turnover of services provided or rendered by the appellant does not exceed Rs. four million, hence sub-section (3) of Section 30 applies to the case of appellant.

10. Mr. Liaquat Ali Bajeeer the learned AC placed on record the registration profile of appellant with FBR and copy of invoices to show that the appellant is providing taxable service under tariff heading 9820.3000. He submitted that show-cause notice was issued and proper right of hearing



was provided to the appellant who remained absent and has not filed any reply. He then submitted that despite the fact that appellant comes within the ambit of notification dated 18.06.2013 since it is providing exempt taxable services it was rightly compulsorily registered and is required to e-file monthly tax returns. He submitted that he is not aware about any notification if issued by the Board under section 30 of the Act. He then submitted that Notification dated 18.10.2011 is not applicable to the appellant as the same is applicable where the taxable service is wholly exempted by a notification, whereas in this case the exemption is to the extent of rupees four million.

1. Mr. Wajahat Ali in rebuttal submitted that there is nothing on record to show that any show-cause notice as alleged by learned AC was issued and served upon the appellant.
2. I have heard the learned representative of the parties and perused the record made available before me.
3. I will first take up the argument of the learned advocate for the appellant that no show cause notice has been issued or served upon the appellant. I had perused the grounds of appeal which does not contain this ground. However since this ground is a legal ground the same was allowed to be urged.
4. Sub-section (2) of section 24B of the Act very clearly provides that "No person may be registered compulsorily without being given an advance notice and an opportunity of being heard. The issuance of notice and opportunity of hearing in judicial and quasi-judicial proceedings are a necessary and mandatory requirement and without which no order can be sustained. Section 75 of the Act provides exhaustive procedure for service of notice, order or requisition and its compliance is necessary. In the reported judgment in the case of Collector Sahiwal versus Muhammad Akhtar, 1971 SCMR 681 it has been held that "The Court in Pakistan have,



however, taken the view that where giving of a notice is provided for by the statute itself then the failure to give such a notice is fatal and cannot be cured.....” In the same judgment it was also held that “This court has gone to the extent of pointing out that the mere absence of a provision in a statute as to notice cannot override the principle of natural justice that an order affecting the rights of a party cannot be passed without an opportunity of hearing and also held that where the giving of a notice is a necessary condition for the proper exercise of jurisdiction then failure to comply with this requirement renders the order void and the entire proceedings which follow also become void”. In this case also sub-section (2) of section 24B clearly provides for issuance of notice before registration, which was not complied with rendering the notice and proceedings illegal.

5. As per the order in original the show-cause notice was issued on 08.08.2018 and the first date of hearing was fixed on 15.08.2018. The learned AC regarding service of show-cause notice In para 2 of the order in original stated that “..... Hi-Tech Engineers (Khalid Masood), were called upon to show-cause vide letter dated 8th August, 2018 as to why they should not be registered compulsorily under section 24B of the 2011-Act.....” This sentence does not speak about service of notice upon the appellant. The learned AC regarding service of show-cause notice in para 3 of the order in original stated that “Hearing in this case was fixed on 15.08.2018. Despite elaborating the facts and law it was noted that M/s Hi-Tech Engineers (Khalid Masood) neither applied for registration under section 24 of the 2011-Act, nor appeared for the hearing and also did not submit any written response in respect of the above show cause notice. Therefore, this office has left no option but, to decide the case on merits”. In this para also the learned AC has not stated whether the show cause notice was served upon the appellant or not. Before further proceeding in the matter the AC has to record a positive finding that notice was served In terms of clause (a) of sub section (1) of section 75 of the Act, which provides that notice is required to be served on an individual personally, which has not been done. In a recent judgment in the case of M/s Nasir Khan & Sons Versus Sindh Revenue Board, Special Sales Tax



M. Q.

Reference No. 784/2016 a learned DB of High Court of Sindh has held as under:-

"5. From perusal of hereinabove provision, it is clear that any notice, order or requisition required to be served on an individual for the purpose of this Act, can be treated as properly served on the individual, if personally served upon the individual, or in the case of the individual under a legal disability the agent of the individual; whereas, in the instant case, admittedly, the applicant has not been personally served, inspite of the fact that the applicant is a registered person, whose all the particular, including his address, are available with the respondents. However, if the individual could not be served personally, then, in terms of Para 'b' of sub-section (1) of Section 75 of the Act, 2011, such service can be affected through registered post or courier service to the individual's usual or last address in Pakistan.....".

In this matter show-cause notice has been claimed under sub section (2) of section 24 of the Act and no compliance of section 75 of the Act has been made. In view of the above it is held that the order in original without notice as provided under sub section (2) of section 24 of the Act is void.

6. As far as the proper right of hearing is concerned it is noted that as per order in original the show cause notice was issued on 08.08.2018 and on the first date of hearing i.e. 15.08.2019 without proper service of show-cause notice the proceedings were finalized and order was announced on 18.09.2019. Apparently the proceedings were concluded in unnecessary haste without service of show cause notice in terms of provisions of section 75 of the Act and without affording proper right of hearing. The unnecessary haste is also evident from the fact that first letter for registration was issued on 30.07.2018 (not known whether served or not) and thereafter without providing proper time to appellant to apply for registration show-cause notice dated 08.08.2018 was issued (not known whether served or not) for 15.08.2018. The proceeding of show-cause notice was finalized within a period of less than one month. It is also noted with concern that while the order in original was passed after one month

M.A.

and three days of the date of hearing the AC deemed fit not to issue any further show cause notice or reminder to the appellant nor fixed any further date of hearing. In view of the above it is held that no opportunity of hearing was provided to the appellant in terms of sub section (2) of section 24B of the Act.

17. The learned Commissioner (Appeals-1) perhaps impressed by the submissions of the learned representative of the appellant recorded by him para 2 of order in appeal and has ignored this important aspect of the case.

18. The learned Commissioner (Appeals-1) in para 5 of the order in appeal stated that ".....The appellant is specifically required to note that in the event of failure of the appellant to file true and correct returns from July-2014 within a period of 03 weeks from date of receipt of this order,.....". The learned Commissioner (Appeals) in a matter of compulsory registration has no jurisdiction to direct the appellant to file returns prior to the date of registration. Section 30 of the Act clearly speaks about filing of returns by registered person. Furthermore the learned Commissioner (Appeals-1) is aware about the orders of this Tribunal regarding the filing of returns by non-registered person (as all orders of the Tribunal were sent to him), but ignored all such orders in issuing direction to the appellant to file returns prior to the date of registration. All orders passed by the Tribunal are binding upon the SRB and its officials including Commissioner (Appeals) unless the same are set aside by the High Court in its referential jurisdiction. To my knowledge till this time none of the orders earlier passed by this Tribunal has been set aside by the High Court and the Commissioner (Appeals) as well as the Officers of SRB are bound to follow the same in letter and spirit. The Commissioner (Appeals-) exceeds his jurisdiction in directing the appellant to file returns prior to the date of registration.

19. Furthermore the matter relates to compulsory registration of appellant only and there is no direction in the order in original for filing returns prior

to the date of compulsory registration. The appeal was filed by the appellant before the learned Commissioner (Appeals-1) challenging its compulsory registration and the learned Commissioner (Appeals-1) in exercise of his powers vested in him under sub section (1) of section 59 of the Act, which provides that ".....Commissioner (Appeals) may pass such order as he think fit, confirming, varying, altering, setting aside or annulling the decision or order appealed against" (emphasis supplied). The learned Commissioner (Appeals) can pass order or decision appealed against as provided in the section but, cannot pass such order and decision or issue objection, which is not part of the decision or order or subject matter of the order in original.

The learned Commissioner (Appeals-1) while conditionally reducing the penalty from Rs.100,000/= to 10,000/= also ignored that the AC has imposed both penalties provided in Serial No.1 of Table under section 43 of the Act i.e. Rs.10,000/= and Rs.100,000/=. Both penalties were provided to cater different situations. In this case technically speaking the offence of non-compliance of a notice or an order can only be considered to have been committed when the matter attained finality. In this case the appellant has challenged the order in original before Commissioner (Appeals-1) and after order in appeal challenged the same before this forum and matter has not attained finality as the order of this forum can be challenged before the High court in referential jurisdiction.

In view of the above discussions the appeal is allowed and both orders in original and order in appeal are set aside. The copy of this order be provided to the learned representative of the parties.

hi.
2019

21/6/19

M. Adeem Siddiqi
(Justice Nadeem Azhar Siddiqi)
CHAIRMAN

Certified to be True Copy

Order Dispatched on

Registrar
[Signature]

[Signature]
Page 8 of 9

Order issued on 21/6/19

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Registrar
[Signature]

es supplied for compliance:-

The Appellant through authorized Representative.
The Assistant Commissioner (Unit-), SRB, Karachi.

copy for information to:-

The Commissioner (Appeals-1), SRB, Karachi.
Office copy
Guard file.