

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD
AT KARACHI

DOUBLE BENCH

APPEAL NO. AT-24/2020

M/s Malik Shehryar Transport Service,
Rawalpindi.....Appellant

Versus

Assistant Commissioner (Unit-23), SRB,
KarachiRespondent

Date of Filing of Appeal: 17.08.2020
Date of hearing: 29.10.2020 & 03.11.2020
Date of Order: 16.11.2020

Mr. Muhammad Din Qazi, Advocate for appellant
Mr. Irfan Waheed, AC-SRB for respondent

ORDER

Imtiaz Ahmed Barakzai: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 58/2020 dated 30.06.2020 passed by the Commissioner (Appeals) in Appeal NO. 09/2020 filed by the appellant against the Order in Original (hereinafter referred to as the OIO) No. 349/2018 dated 24.04.2018 passed by Mr. Muhammad Yousuf Bukhari, Assistant Commissioner, (Unit-23) SRB, Karachi.

02. The brief facts of the case as stated in OIO are that the appellant had voluntarily registered with SRB under service category of "Inter-City transportation or carriage of goods by road or through pipeline or conduit" (Tariff heading 9836.0000) of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act). Section 30 of the Act requires the SRB registered person to e-file monthly Sindh Sales Tax Returns (SST Returns) within the time specified in rule 12 and 14 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) read with Rule 42G thereof.

03. It was alleged in the OIO that the appellant was required to e-file SST Returns for the periods December, 2014 to December, 2015, and February, 2016 to February, 2018, within due date, but it had failed to file such returns. The appellant was advised to file the SST Returns and was also required under section 52(1) of the Act to provide copy of Income Tax Return of 2016-17 along with summary of invoices vide letter dated 12.01.2018 (which was returned unserved) followed by email dated 15.02.2018 sent to registered e-mail address declared in SRB registration profile; but the appellant failed to make any compliance.

04. A Show-Cause Notice (SCN) dated 22.03.2018 was issued and served on the appellant wherein it was required to explain as to why penalty under Serial No.2 of the Table under section 43 of the Act should not be imposed against it for non-filing of monthly SST Returns of aforementioned tax periods in violation of section 30 of the Act and the Rules. The appellant was asked to explain as to why penalty under Serial No.15 of the Table under section 43 of the Act should not be imposed against it for violation of section 52(1) of the Act for non-production of requisite information. The appellant failed to submit any response to the SCN nor appeared before the Adjudication Officer (AO) for hearing.

05. The AO passed OIO dated 24.04.2018 imposing penalty of Rs.7,711,614/= for non-filing of the SST Returns for the above mentioned



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tax periods under serial No.2 of Table under section 43 of the Act and also imposed penalty of Rs.100,000/= for non-submitting of information and record under section 52 (1) of the Act under serial No.15 of Table under section 43 of the Act.

06. The said OIO was challenged by the appellant before the Commissioner (Appeals) by way of filing of appeal, who dismissed the same as barred by time, hence this appeal.

07. The learned advocate for the appellant Mr. Muhammad Din Qazi, submitted that the levy of SST on Intercity Transport Service, Tariff Heading 9836.0000 has remained in abeyance up to 31.12.2017 and for that period neither the tax was payable nor any SST Returns were required to be filed. He further submitted that penalty of 100,000/- was imposed for not complying with the requirements of section 52 of the Act without issuing any SCN or providing right of hearing. He further submitted that penalty under Table of 2 of Section 43 of the Act was imposed without taking into consideration various orders of this Tribunal which are binding upon the SRB and its officials.

08. Mr. Qazi disputed the service of OIO and submitted that the same was not sent to the two addresses of the appellant available in the registration profile and the appeal before Commissioner (Appeals) was filed within time from the date of receipt of OIO. He further submitted that the appellant had neither deposited tax during the tax periods September, 2014, October, 2014 and November, 2014 as mentioned in the Tax Profile of the appellant nor filed tax returns for those periods since the appellant was not liable to pay tax and file tax returns before the date of its registration with SRB which was 07.08.2015.

09. Mr. Muhammad Din Qazi advocate further submitted that no tax liability was determined against the appellant and the penalty was imposed for non-filing of monthly tax returns for the tax periods from December-2014



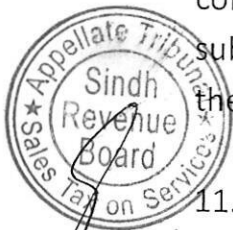
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to December-2015 and from February-2014 to December-2015 and from February-2016 to February-2018 for the periods when the service was in abeyance. He further submitted that the calculation of penalty under Sr. No-2 of Table under section 43 of the Act was against the various orders of the Tribunal and the penalty was imposed without establishing mensrea on the part of the appellant in violation of the judgments of the Superior Courts. He relied upon the case reported as DG Khan Cement Co. V/s Federation of Pakistan, SCMR 2004 Page-456.

10. Mr. Irfan Waheed, AC-SRB submitted that the OIO was served upon Mr. Dil Faraz, representative of the appellant and produced the report of courier. The AC submitted that the Service of Transportation on goods, Tariff Heading 9836.0000 was added effective from July-2014 and was kept in abeyance from time to time vide various SRB Circulars till 31st December-2015. However, after 01.01.2016 only the petroleum oil which was transported through oil tankers was exempted from payment of SST and not transportation of goods by road. He contended that even if the transportation service was in abeyance the appellant was liable to file monthly tax returns and penalty for non-filing of returns was competently and justly imposed. He further submitted that non-filing of returns for a long period established mensrea on the part of the appellant. He further submitted that appellant submitted application for registration on 25.09.2014 and had also submitted monthly, tax returns for the tax periods from September-2014 to November-2014 and January-2016. He further contended that notice under section 52 (1) of the Act was duly served for submission of information and documents but the same were not filed thus the penalty was rightly and justly imposed.

11. After hearing the parties at length Mr. Muhammad Din, Qazi Advocate for the appellant submitted that his client was ready to deposit penalty under Sr. No. 2 of Table under section 43 of the Act @ Rs.10,000/-per month/tax return from August-2015, when the appellant was registered till February-2018 excluding (January-2016) making total 30 months and



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requested one week time to deposit the amount with SRB. The appellant was allowed to deposit Rs.3,00,000/- on account of penalty for non-filing of returns under Sr. No. 2 of Table under section 43 of the Act and to submit CPRs. The learned advocate for appellant signed the Diary Sheet in token of such acknowledgment.

12. The learned Advocate for the appellant submitted two CPRs dated 21.12.2019 and 30.06.2020 in the sum of Rs.292,706/= and Rs.72,000/= respectively. He submitted that the due penalty was already deposited, thus the ^{case of} appellant may be discharged.

13. We have heard the learned representatives of the parties and perused the record made available before us.

14. The dispute between the parties was non-filing of SST Returns for the above mentioned periods and the rate of penalty for non-filing of returns and penalty for non-providing the documents and information.

15. The penalty for non-filing of returns for the above mentioned tax periods amounting to Rs.7,711,614/= was calculated and imposed upon the appellant under serial No.2 of Table of section 43 of the Act in contravention to the provision of law and various Orders of this Tribunal. In our latest decision dated 21.09.2020 in Appeal No. AT-12/20020, M/s M. Sharif Rajput Enterprises, Hyderabad Versus Assistant Commissioner, SRB, Hyderabad relying upon the earlier decisions of the Tribunal a) Appeal No.AT-92/2016 M/s Slingshot.(Pvt) Limited versus Assistant Commissioner, (Unit-21), SRB, Karachi decided on 05.01.2017, b) Appeal No. AT-47/2018, M/s Fumican Services versus Assistant Commissioner, SRB, decided on 16.10.2018 c) Appeal No. AT-175/2018 AC-SRB versus Powertech Switchgear Services, which was decided on 22.02.2019. We have very categorically held as under:-

"16. It is provided at Sr. No.2 of Table of section 43 of the Act that *where any person fails to furnish a return within the due date such person shall be liable to a penalty of Rs.10,000/= per month or a **fraction*** (emphasis

supplied) thereof; provided that if a return is filed within ten days of the due date, a penalty of 300 rupees for each day of default shall be paid".

17. In the above provision of the Act per month means per tax return as the tax period defined in sub-section (95) of section 2 of the Act provides that "tax period means a period of one month or such other period as the Board may, by notification in the Official Gazette, specify." Furthermore the Assessing Officer has incorrectly calculated penalty in fraction. In the provision at S. No.2 of Table of section 43 of the Act the word "fraction" denotes that in case of defaults of more than ten days the penalty for full month was to be imposed. Therefore for non-filing of monthly return penalty can only be imposed at Rs.10,000/= per month".

16. The above Order of the Tribunal and the other's order on the strength of which the said order was passed are final as provided under sub-section (8) of section 62 of the Act and are still holding the field and have not been set aside by the Honorable High Court in referential jurisdiction and are binding upon the Assessing Officers as well as on the Commissioner (Appeals). 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 imposing penalty above Rs.300,000/= is annulled and set aside.

17. The case of the appellant is that no SCN under section 52 (1) of the Act was served upon the appellant. The case of respondent is that despite service of letters and SCN the appellant failed to provide the documents asked for and the penalty under serial No.15 of table of section 43 of the Act for non-compliance of provisions of section 52 was rightly imposed.

18. Section 52 of the Act provides an obligation on the person who is required to maintain record to produce documents and provide information as and when required by the officer of SRB not below the rank of Assistant Commissioner by notice in writing for the reasons specified in clause (a) of sub-section (1) of section 52 of the Act. The taxpayer is obliged to produce such documents or record for examination, which the officer of



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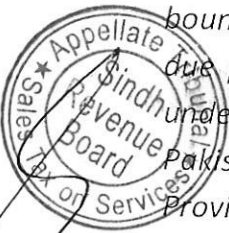
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the SRB considers necessary in relation to any matter under the Act or relevant to the audit, inquiry or investigation under the Act. The respondent placed on record the photocopy of the letter dated 13.01.2018 purported to be issued under section 52 (1) of the Act which was returned undelivered followed by an e-mail. However, no SCN was served upon the appellant before imposition of penalty of Rs.100,000/=. It is the minimum requirement of law that before penalizing any person he should be issued a show-cause notice and right of hearing should also be provided to him.

19. A duty is cast upon every public functionary to act fairly, justly and without arbitrariness. Article 4 of the Constitution of Islamic Republic of Pakistan provides that right of individuals to be dealt with in accordance with law and to enjoy protection of law is the inalienable right of every citizen. After insertion of Article 10A in the Constitution a person shall be entitled to a fair trial and due process of law. Due process of law includes the right to be treated according to law and right of hearing is the part of due process of law. The principles of natural justice, fairness, procedural propriety and reasonableness should be kept in mind while passing orders adversely affecting the person and property which were lacking in the instant case. In the reported case of Commissioner Inland Revenue versus Ali Hassan Metal Works, 2018 PTD 1399, it has been held as under:-

"10. The authorities, exercising quasi-judicial powers under a statute are bound to conduct a fair adjudication. To be dealt in accordance with law, due process and fair trial are inalienable fundamental rights guaranteed under Articles 4 and 10-A of the Constitution of the Islamic Republic of Pakistan 1973 ("Constitution"). August Supreme Court of Pakistan in the Province of East Pakistan v. MD. Mehdi Ali Khan (PLD 1959 SC 387) held:-

"The determination of every right or liability claimed or asserted in a legal proceeding depends upon the ascertainment of facts and the application of the law to the facts so found. It is a normal feature of the judicial process first to discover the facts and then to determine what rights and liabilities follow from the application of the law to the facts found."



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In Reply,

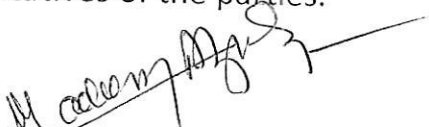
20. It was evident from the perusal of letter dated 13.01.2018 that irrelevant documents were asked from the appellant for reconciling the activities of all persons registered with SRB. This query is against the spirit of clause (b) of sub-section (1) of section 52 of the Act and cannot be considered a valid reason for requisition of such information / documents.


21. In the instant case maximum penalty of Rs.100,000/= was imposed under Serial Number 15 of Table of Section 43 of the Act without service of SCN. Thus the imposition of penalty without issuance of any specific call letter or SCN is illegal. This view gains support from the reported case of Amina Z Beauty Parlor versus PRA 2016 PTD 654, wherein it was held as under:-

"8. ...The authority should have followed the minimum requirement of principles of natural justice i.e. issuance of notice to the petitioner. It is well settled proposition of law that taxing authorities cannot demand amount without issuance of show-cause notice and providing opportunity of hearing and fixing liability in terms of the relevant provision of law..."

22. In view of above discussions, this appeal is partly allowed and the penalties imposed by the Assessing Officer and confirmed by the Commissioner (Appeals) under serial 2 and 15 of section 43 of the Act are reduced from Rs.7,811,614/= to Rs.300,000/=. The appellant has deposited this amount. However, the AC is required to check that the penalty paid relates to the instant case.

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



(Justice® Nadeem Azhar Siddiqi)
Chairman


(Imtiaz Ahmed Barakzai)
Technical Member


Karachi; Dated: 16.11.2010

Certified to be True Copy

Order Dispatched on

20/11/2020


Order issued on

20/11/2020

Registrar


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REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, SRB, for compliance

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi
- 4) Office Copy.
- 5) Guard File.

