

(Guard file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD
AT-KARACHI

DOUBLE-BENCH-I

APPEAL NO. AT-06/2021

Assistant Commissioner, (Unit-27) SRB,
Shaheen Complex 09th Floor,
M.R Kiyani Road, Karachi.....Appellant

Versus

M/s Ehsan-ul-Haq
House No. 56, Street No.1,
Sector D, Qdyyumabad,
Korangi Road, Karachi.....Respondent

Date of Filing of Appeal: 26.01.2021
Date of Hearing: 30.03.2021
Date of Order 30.03.2021

Mr. Shafqat Hussain AC-SRB, for appellant.
Mr. Ehsan-ul-Haq, respondent in person.

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the Assistant Commissioner (Unit-27), SRB Karachi challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.112/2020 dated 15.12.2020 passed by the Commissioner (Appeals) in Appeal No. 161/2020 filed by the respondent against the Order-in-Original (hereinafter referred to as the OIO) No. 738/2019 dated 06.11.2019 passed by Mr. Imtiaz Ali Assistant Commissioner, (Unit-27) SRB, Karachi.

02. The facts as stated in the OIO are that the services provided or rendered under service category of "Renting of machinery, equipment,



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appliances and other tangible goods" were classified under Tariff Heading of "9806.6009" of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter to be referred as 'the Act) and were declared taxable services in terms of section 3(1) of the Act read with definition and explanation given in section 2(72CC) thereof, and accordingly, these services were liable to Sindh Sales Tax (SST) in terms of section 8 of the Act at the rate of 5% w.e.f. 1st July, 2019. It was further stated that all the persons engaged in providing or rendering such services were required to get themselves registered with the Sindh Revenue Board (SRB) as required under section 24 of the Act read with rules 3, 4 and 5 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules).

03. It was alleged in the OIO that the respondent was reportedly providing or rendering taxable services of "Renting of machinery, equipment, appliances and other tangible goods and the respondent was liable to e-enroll/e-register with SRB. However, the respondent failed to get himself registered/e-enrolled with SRB.

04. The respondent was served with Show-Cause Notice (SCN) dated 20.08.2019 to explain as to why he should not be compulsorily registered with SRB under section 24B of the Act. The respondent was also called upon to explain as to why penalty under Serial No. 1 of the Table under section 43 of the Act should not be imposed.

05. It was stated in the OIO that hearings were fixed on 27.08.2019, 11.09.2019, 23.09.2019 and 31.10.2019. However, no one appeared on behalf of the respondent for hearing nor submitted any written reply despite the fact that the aforementioned notices were duly served upon the respondent.

06. The Assistant Commissioner (AC) passed OIO and ordered for compulsory registration of the respondent under section 24B of the Act. The AC also imposed penalty of Rs.100,000/= under Serial No. 1 of the Table under section 43 of the Act.

07. The appellant challenged the said OIO by filing appeal before Commissioner (Appeals) who after hearing upheld the appellant's

compulsory registration under Tariff Heading 9806.6000 of the Second Schedule to the Act. However he condoned the delay in filing of appeal and remitted the entire penalty of Rs.100,000/= for violation of section 24 of the Act, hence this appeal by the department.

08. Mr. Shafqat Hussain the learned AC for the appellant submitted that the OIA passed by the learned Commissioner (Appeals), SRB to the extent of remitting the penalty for compulsory registration was void, bad in law, without any justification and against statutory provision of Act and the rules framed thereunder. It was further contended that the learned Commissioner (Appeals), SRB has erred in holding that the respondent was not given adequate chance to put up any meaningful response to the SCN or to go through department's legal and procedural steps in order to get him voluntarily registered with SRB. The learned AC further submitted that despite the compulsory registration of the respondent he was neither paying tax nor filling monthly e-return, which clearly reflected the non-compliant attitude of the respondent.

09. The respondent appeared in person and submitted that he was an illiterate and poor person and was unaware about the levy of SST of rental of machinery. It was further stated that neither any notice of proceeding before the AC nor the OIO was served upon the respondent. It was further stated that even before registration in the month of October and November, 2019 the service recipient had withheld the SST amounting to Rs.3,000/=. He further contended that it was only in January, 2020 when an amount of Rs.100,000/= was withdrawn from his bank account without any notice to him. Subsequently the respondent came to know about the OIO dated 06.11.2019 but could not file appeal immediately due to lockdown, and only after obtaining the certified copy of OIO, filed appeal before the Commissioner (Appeals), SRB.

10. The respondent further submitted that he had provided services on behalf of someone else on commission basis and was not the owner of the machinery. He further submitted that whenever services were provided the SST was withheld by the service recipient.



11. We have heard the learned representative of the parties and perused the record made available before us.

12. The respondent was compulsorily registered under section 24A of the Act. The respondent had not denied that his engagement in the business of renting of machinery. The AC had produced an Invoice dated 11.06.2019 amounting to Rs.181,296/= from which it was evident that the respondent was in the business of renting of machinery since May, 2019 and was required to be registered for providing or rendering taxable services.

13. The respondent had taken a specific plea before us as well as before the learned Commissioner (Appeals) that no notice of proceeding as well as OIO was served upon him. The AC produced the photo copies of the notices for the hearing dated 11.09.2019, 23.09.2019 and 31.10.2029 before us but has failed to submit any acknowledgement or proof of service upon the respondent. The learned AC was required to serve the notice of hearing in terms of section 75 of the Act but apparently no such efforts were made by him. In absence of any acknowledgement of service we have no option but to hold that neither any notice of hearing nor OIO were served upon the respondent and the respondent could not be blamed for delay if any in filing of appeal. Since the respondent had not challenged the OIA regarding upholding his compulsory registration, thus no purpose would be served in remanding the case for fresh decision on the point of compulsory registration of the respondent.

14. On a query from the Tribunal the AC submitted that after compulsory registration of the respondent no notice for assessment of tax was served upon the respondent.

15. We have carefully examined the contents of the OIA. The Commissioner (Appeals) in para 6 and 7 of OIA had held as under:-

...“6. I have given patient hearing to the rival sides, looked into above stated facts and arguments in depth, scanned the available record and also looked into the appurtenant position of law in this matter. I am of the considered opinion that the Appellant by virtue



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of being a semi-literate/illtreat person and also being a small-time vendor, is hard done by the impugned Order because he was not given an adequate chance to put up any meaningful response to the show-cause notice or to go through department's legal and procedural steps in order to get voluntarily registered in SRB as per SCN. He was compulsorily registered in SRB by the respondent AC, which action is sustainable under the relevant provisions of the Act, 2011 and Rules made thereunder. However, imposition of penalty of Rs.100,000/- on the Appellant seems to a harsh action and is accordingly not sustainable, in the given facts of the matter.

7. Keeping in view the foregoing deliberation, I am inclined the delay in filing of the instant appeal, as per appellant's written application in this regard, in exercise of the powers conferred upon me under section 57 (5) *ibid*, being satisfied that the criterion given thereunder is duly met in this case. Further, after hearing both sides, I am inclined to remit in toto the penalty of Rs.100,000/= as imposed upon the appellant vide impugned OIO, the same being harsh in the given facts and circumstances. I am however, inclined to uphold appellant's compulsory registration in SRB under Tariff Heading 9806.6000 of the 2nd Schedule to the Act, 2011 as confronted through the impugned OIO the same being in order, under law".

16. The appellant/respondent has challenged the findings in the OIA condoning the delay in filing of the appeal and remitting the penalty of Rs.100,000/=. Sub-section (5) of section 57 gives the power to Commissioner (Appeals) to admit appeal after the expiration of the period specified in sub-section (4) of section 57 of the Act if he is satisfied that the appellant was prevented by sufficient cause from lodging the appeal within that period.

17. The Commissioner (Appeals) derives power to impose or not to impose penalty in view of language of Serial No. 1 of Table under section 43 of the Act. The Commissioner (Appeals) had condoned the delay and remitted the penalty in exercise of discretion vested with him.

18. The discretion if exercised reasonably, fairly, justly and for the advancement of the purpose of enactment could not be easily challenged unless it is shown that such exercise of discretion was



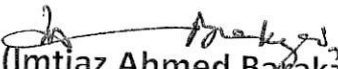
perverse, malafide and coram non judice, in which the department had miserably failed.


19. It is regretted to point out that the Commissioners, SRB were not following the instructions of the Board contained in the Standing Order No. 01/2019 dated 03.06.2019 and were allowing appeals to be filed mechanically before this Tribunal and this attitude of the Commissioners, SRB is in contravention to the judgment of the Honorable Supreme Court in the case reported as Government of Pakistan through Chairman FBR Versus Hazrat Hussain and others (2018 SCMR 939) wherein it was held as under:-

"...It is to be noted that appeals should not be filed as a matter of routine or because a decision has been rendered against the Department. Decisions should be taken on a reasonable basis. It is not advisable for government departments to waste public time and money by filing appeals routinely."

20. In view of the above discussions, we do not find any reason to interfere with the impugned OIA, resultantly this appeal is dismissed. The copy of this order may be provided to the learned representative of the parties.

21. The copy of this Order may also be sent to the learned Chairman, SRB for placing the same before the Board for taking necessary action to implement the Standing Order No. 01/2019 dated 03.06.2019 in later and spirit.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi: Dated: 30.03.2021

Copy Supplied for compliance:

- 1) The Assistant Commissioner, SRB, Karachi.
- 2) The Respondent through Authorized Representative.

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

09/04/2021

Order Dispatched on

09/04/2021

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Registrar