

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT
KARACHI
SINGLE BENCH-I
APPEAL NO. AT-29/2021

M/s Analytical Measuring Systems (Pvt.) Ltd.
(SNTN: S0709644-5), AMS House, 14-C,
Main Sehar Commercial,
Khayaban-e-Sehar Phase-VII, Karachi.....Appellant

Versus

Assistant Commissioner (Unit-33),
Sindh Revenue Board,
M. R. Kiyani Road, B, Karachi.....Respondent

Date of filing of Appeal: 26.05.2021
Date of hearing: 02.07.2021
Date of Order: 23.07.2021

Mr. Abdul Latif Chandio Advocate, for appellant

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.38/2021 dated 03.05.2021 passed by the Commissioner (Appeals) in Appeal No.117/2020 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 101/2020 dated 12.05.2020 passed by the Ms. Shumaila Yaar Muhammad, Assistant Commissioner, (Unit-30) SRB Karachi.

The brief facts as stated in the OIO were that the appellant was operating in Sindh province and was providing or rendering taxable services in respect of "Indenters" classified under Tariff Heading 9819.1200 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) chargeable to Sindh Sales Tax (SST) at the prescribed rate with effect from July, 01st 2015 under section 8 of the Act.

03. It was alleged in the OIO that from the Annual Audited Accounts for the year ended June, 2018 provided by the appellant, it clearly depicted that the indenting commission of Rs.126,521,532/- was received by the appellant involving payment of SST of Rs.7,677,717/-.

04. It was also alleged in the OIO that appellant vide Sindh Revenue Board (SRB) letters dated August, 30th 2019, September, 4th 2019, September, 16th 2019, September, 24th 2019, November, 22nd 2019, December, 13th 2019, December 19th 2019, January, 1st 2020 and February 20th 2020 was intimated about the above legal and factual position, and was provided with multiple opportunities to get itself registered with SRB and deposit the due amount of SST on the taxable services of indenting in Sindh government's treasury. However, the appellant neither got e-registered with SRB under section 24 of the Act nor paid due amount of SST on the aforesaid taxable services under sections 8,9 and 17 of the Act read with rule 14 and 41B of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules).

05. The appellant was served with a Show-Cause Notice (SCN) dated 27.02.2020 calling it to explain as to why it should not be compulsorily registered with SRB under section 24B of the Act and why the penalty under Serial No.1 of the Table under section 43 of the Act should not be imposed for violation of the provisions of section 24 of the Act read with the Rules. The appellant filed written reply dated 04.05.2020 stating therein that it was engaged in the business of import and export, manufacturing, buying and selling goods /supplies and was registered with FBR under Sales Tax Act, 1990 and had not provided or rendered services listed under the Second Schedule to the Act. It was further stated that the customers of the appellant do not operate in Sindh but were operating in the foreign countries which do not fall within the jurisdiction of SRB nor they could be compelled to bear the impact of SST.

06. The Assessing Officer (AO) after hearing passed Order of compulsory registration of the appellant under section 24B of the Act falling under Tariff Heading 9819.1200 (Indenters) and also imposed penalty of Rs.100,000/= under Serial No. 1 of the Table under section 43 of the Act.

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07. The appellant challenged the said order by way of filing appeal before the Commissioner (Appeals), who fully maintained the OIO, hence this appeal by the appellant.

08. Mr. Abdul Latif Chandio Advocate for the appellant submitted that the appellant was wrongly registered as 'indenters' without considering the fact that the appellant was doing business of manufacturing, import and export of goods and was registered with FBR. He relied upon the Sales Tax Certificate available at page 48 and also relied upon Income Tax registration certificate available on page 46 of the file. He further submitted that the appellant obtained contracts of supply of goods by participating into tenders of supply of goods and if required imported goods from abroad. He further submitted that the appellant was not acting as an agent of any foreign supplier and was not functioning as indenter. He further submitted that the appellant was paying sales tax on goods at the stage of manufacturing and import and charging of SST was not permissible on goods and amounted to double taxation. He further submitted that SST has been levied in VAT mode and the burden of tax had to be passed on to the recipient of service or to the end consumer and under law the service provider was not liable to take upon itself the burden of payment of SST and was only liable to charge tax from the recipient of service and to deposit the same with SRB. However in the instant case, since the service recipient was stationed abroad and was not subject to Pakistani laws the burden of tax could not be passed on to it. He further submitted that penalty of Rs.100,000/= was imposed without any justification and establishing mensrea on the part of the appellant.

I have heard the learned representatives of the parties and perused the record made available before me.

10. The main contention of the learned advocate for the appellant was that the appellant was not engaged in indenting business. This contention of the appellant has no force. The perusal of the Annual Audited Accounts for the year ended June, 2018 provided by the appellant itself clearly showed that it had earned indenting commission of Rs.126,521,532/-. The Annual Audited Accounts are sufficient to establish that the appellant was engaged in the

economic activity of providing or rendering of indenting service. The definition of "indenters" provided under sub-section (51A) of section 2 read as under:-

"(51A) Intender means a person who is representative for a non-resident person or a non-resident company or a foreign product or service and who gets a consideration in the shape of commission, fee, remuneration or royalty on transection, irrespective of whether the transaction has taken place out of his effort, consent or otherwise".

11. The appellant was recipient of indenting Commission and could not dispute that it was not engaged in the economic activity of providing or rendering of indenting service. According to Section 3 of the Act the taxable service is a service listed in the Second Schedule of the Act, which is provided by a registered person from his registered office or place of business in Sindh. Section 24 of the Act mandated that registration will be required for all persons who are resident and providing any of the services listed in the Second Schedule to the Act from their registered office or place of business in Sindh. The Tariff Heading 9819.1200 (Indenters) is the part of Second Schedule to the Act and the appellant is a resident person having its office in Sindh and has provided service of indenters from its registered office in Sindh.

12. In view of above quoted provisions it clear that services provided or rendered by the indenter from its registered office in Sindh are taxable services according to law and the person providing or rendering such services is required to be registered.

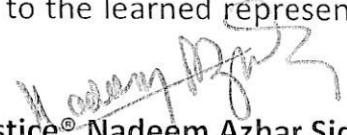
13. The appellant was compulsory registered under section 24B of the Act as it had failed to get itself registered under section 24 of the Act. Section 24B of the Act provided that a person required to be registered under the Act and if that person has not applied for registration, the officer of the SRB shall, after such enquiry as he may deem fit, register the person through an order to be issued in writing and such person shall be deemed to have been registered from the date he became liable to registration.

14. The appellant is a resident person and is providing and rendering service of indenter within Sindh, and since the appellant had failed to get registration it was rightly registered compulsory under section 24B of the Act.

15. The Assessing officer has imposed penalty of Rs.100,000/= under Serial No.1 of Table of Section 43 of the Act for non-registration. This provision provides that penalty can be imposed if any person who is required to apply for registration under this Act fails to make an application for registration before providing or rendering taxable services, such person is liable to pay penalty of Rs.10,000/- or five percent of the amount of Sales Tax. It was further provided that in case of non-compliance of compulsory registration the minimum penalty should be Rs. 100,000/-. The AO had failed to discuss the requirement of compulsory registration in the OIO, and the appellant had failed to comply with the same. However the AO has not discussed imposition of levying maximum penalty of Rs.100,000/= in the OIO. When two types of penalties are provided under law the AO is duty bound to justify the imposition of maximum penalty since both such penalties cater to the different situations. Thus AO has failed to discuss the situation for imposition of lesser penalty or situation which warranted imposition of maximum penalty.

16. In view of the above I am satisfied that both the OIO and OIA are correct to the extent of compulsory registration of the appellant and is thus maintained. However, the OIO and OIA imposing maximum penalty of Rs.100,000/= suffer from legal infirmity and is thus not tenable under law, consequently the imposition of penalty of Rs.100,000/= is reduced to Rs.10,000/=.

17. The copy of this order may be provided to the learned representative of the appellant and to AC-SRB.


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:

Dated: 23.07.2021.


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.

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

05/08/2021

Order Dispatched on

05/08/2021
Registrar

Page 5 of 5

Registrar