

*Ground file*

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD.  
(Before: Mrs. Alia Anwer, Member Judicial)

Appeal No.AT-117/2022

M/s. Bali Enterprises,  
6<sup>th</sup> Floor, Continental Trade Centre,  
Clifton, Karachi. .... appellant

Versus

The Assistant Commissioner (Unit-07),  
Sindh Revenue Board, .... respondents

Mr.Danish Abbas Khokhar, advocate for appellant  
Mr.Yousuf Ali Magsi, AC (Unit-07), for respondent.

Dates of hearing: 16.08.2023

Date of order: 19.10.2023

**ORDER**

The appellant has assailed the order dated 06.02.2019 vide Order-in-Original (hereinafter referred to as "the Original Order") whereby the appellant has been directed to pay penalty amounting to Rs.490,000/- in terms of serial No.2 of the Table in section 43 of the Act, 2011<sup>1</sup>.

1. \_\_\_\_\_  
The Sindh Sales Tax on Services Act, 2011

2. Being aggrieved by and dissatisfied with the order of Assistant Commissioner (Unit-07), appellant filed instant appeal before Commissioners (Appeals), which has been transferred to this Tribunal under section 59(7) of the Act.

3. Learned counsel for appellant submits that impugned order is bad in law and on facts. He argued that appellant was registered with the department<sup>2</sup> as "Custom Agents" provided under the tariff heading 9805.4000 of the 2<sup>nd</sup> Schedule of the Act, 2011. He argued that appellant carried out such business till October 2014 and filed returns regularly, in compliance of section 30 of the Act, 2011. Learned counsel contended that appellant had sold out his business to one Mr.Majid Ali Khan, in pursuance of such transaction appellant's license was transferred in the name of said Mr.Majid Ali on 24.02.2014. He contended that thereafter appellant closed his Bank account and never filed any return since February 2014. In support of his contention learned counsel submitted copy of License No.01/07. Learned counsel contended that appellant had produced such documents before the Assessing Officer but he did not consider the same. He prayed that instant appeal may be allowed and the penalty imposed upon appellant may be waived upto 100%.

4. Assistant Commissioner (Unit-01) vehemently opposed the arguments advanced by learned counsel for appellant. He submits that license issued in the name of appellant is not transferrable, therefore; same cannot be taken

<sup>2</sup> Sindh Revenue Board.

into consideration. He supported "the Original Order" and prayed for dismissal of instant appeal.

5. After hearing arguments of both the side, following are the points for determination before this Tribunal;

1. Whether penalty imposed in terms of Sr.2 of the Table under section 43 of the Act, 2011 upon the appellant is justified?

2. What should the order be?

POINT No.1:

6. I have heard both the sides at length and have also perused the record. The appellant has been charged in terms of Sr.2 of the Table under section 43 of the Act, 2011 in pursuance of non-compliance of section 30 of the Act, 2011. Before proceeding further, I feel necessary to reproduce herein below the relevant provisions of the Act, 2011 and the Rules,

**30. Return.--** (1) Every registered person shall furnish, not later than the due date, a true and correct return in the prescribed form to a designated bank or any other office specified by the Board, indicating the tax due and paid during a tax period and such other information, as may be prescribed.

(2) ... ..

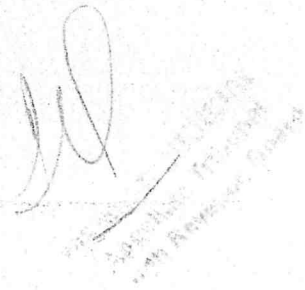
(3) ... ..

(4) ... ..

(5) \*\*\*

(6) ... ..

**Section 2(71) "registered person"** means a person who is registered or is liable to be registered under this Act or any other person or class of persons notified by the Board in the official Gazette.



Provided that a person liable to be registered but not registered under this Act shall not be entitled to any benefit available to a registered person under any of the provisions of this Act or the rules made thereunder.

- 24. Registration.**--(1) Registration will be required for all persons who:--
- (a) are residents;
  - (b) provide any of the services listed in the Second Schedule from their registered office or place of business in Sindh; and
  - (c) fulfil any other criteria or requirements which the Board may prescribe under sub-section (2).
- (2) ... ..  
(3) ... ..  
(4) ... ..  
(5) ... ..  
(6) ... ..

**Section 3. Taxable Service.**--(1) A taxable service is a service listed in the Second Schedule to this Act, which is provided:--

- (a) by a registered person from his registered office or place of business in Sindh;
- (b) in the course of an economic activity, including in the commencement or termination of the activity.

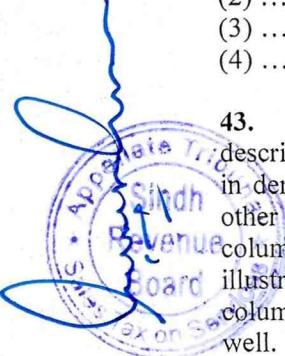
*Explanation.*--This sub-section deals with services provided by registered persons, regardless of whether those services are provided to resident persons or non-resident persons.

- (2) ... ..  
(3) ... ..  
(4) ... ..

**Section 9. Person liable to pay tax.**--(1) Where a service is taxable by virtue of sub-section (1) of section 3, the liability to pay the tax shall be on the person providing the service.

- (2) ... ..  
(3) ... ..  
(4) ... ..

**43. Offences and penalties.**--Whoever commits any of the offence described in column (1) of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under any other law, be liable to the penalty mentioned against that offence in column (2) thereof. The sections referred to in column (3) are meant for illustrative purposes only and the corresponding offence described in column (1) may fall and be prosecuted under other sections of this Act as well.



*[Handwritten signature]*  
MEMBER JUDICIAL  
Appellate Tribunal,  
Sindh Revenue Board

Offences	Penalties	Section of the Act to which offence has reference
1	2	3
2. Where any person fails to furnish a return within the due date.	Such person shall be liable to a penalty of 10,000 rupees per month or a fraction 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.	30


7. Bare reading of above provisions shows that every person, who provides any of the taxable services from his registered office or place of business in Sindh, is liable to file return showing the tax due and paid during such tax period and its non compliance would entail penalty in terms of serial No.2 under section 43 of the Act, 2011. In such scenario provision of taxable service is one of the necessary ingredient to become liable to file return under section 30 of the Act, 2011.

8. It is an admitted position the appellant was carrying on business of "Custom Agents" provided under the tariff heading 9805.4000 of the 2<sup>nd</sup> Schedule of the Act, 2011 vide License No.01/07, which has been transferred in the name of Mr.Majid Ali on 24.02.2014 by the Custom Authorities. Resultantly he provided no taxable service under the same tariff heading, making him liable to file return for the subject period.

9. In such circumstances imposition of penalty imposed in terms of S.No.2 of the Table under section 43 of the Act, 2011 upon the appellant is unjustified, hence; this point is answered in negative.

POINT No.2:

10. With the above observations, instant appeal is hereby allowed. Resultantly, impugned order i.e. "the Original Order" dated 06.02.2019 stands set-aside. Let the copy of this order be provided to the learned representatives of the parties.

  
(ALIA ANWER)  
Member Judicial,  
Appellate Tribunal,  
Sindh Revenue Board.


Karachi;  
Dated: 19.10.2023


Copy supplied to:-

The appellant through authorized representative,  
The Assistant Commissioner (Unit-07), SRB, Karachi,  
Office File, and  
Record file.

Certified to be True Copy

  
19-10-2023  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

19-10-2023  
Order issued on .....  
  
Registrar

19-10-2023  
Order Dispatched on .....  
  
Registrar