

**BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT
KARACHI**

APPEAL NO. AT-155/2022

Assistant Commissioner (Unit-34),
Sindh Revenue Board, (SRB)
Bungalow, No.14-A/1, Defense
Housing Society, Phase-I, Cantt.
Hyderabad.....Appellant

Versus

M/s Pakistan Oil Mills (Pvt.) Ltd.
(SNTN: 0913984-2)
Massan Road, Liaqat Colony, Hyderabad.....Respondent

Date of filing of Appeal: 19.08.2022
Date of hearing: 15.09.2022
Date of Order 24.10.2022

Mr. Waleed Patoli, AC, (Unit-34)-SRB, Hyderabad for appellant.

Mr. Nadir Hussain Abro, Advocate for the respondent.

ORDER

Justice ® Nadeem Azhar Siddiqi: This appeal has been filed by the Assistant Commissioner (Unit-34), SRB Hyderabad challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 98/2022 dated 22.06.2022 passed by the Commissioner (Appeals) in Appeal No. 192/20201 filed by the respondent against the Order-in-Original (hereinafter referred to as the OIO) No. 381/2021 dated 01.10.2021 passed by Mr. Javed Ali Hingorjo, Assistant Commissioner, (Unit-34) SRB Hyderabad.

02. The brief facts as stated in the OIO were that the respondent having NTN #0913984-2 was e-signed up as withholding agent with Sindh



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Revenue Board (SRB) under sub-rule (2) of rule 1 of Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 (hereinafter referred to as the Withholding Rules) for the purpose of withholding of Sindh Sales Tax (SST) under section 13 of the Sindh Sales Tax on services Act 2011 (hereinafter referred to as the Act) read with rule 3 of the Withholding Rules.

03. It was alleged in the OIO that during the scrutiny of online tax profile of the respondent available with SRB, it was observed that the respondent had failed to e-file monthly statements of SST for the tax periods December-2017 to January-2020 and failed to comply with the provision of the Act and the Withholding Rules.

04. The respondent was served with a Show-Cause Notice (SCN) dated 16.09.2020 to explain as to why the penalties under Serial No. 11 and 12 of the Table under section 43 of the Act should not be imposed for the contravention of the provisions of section 13 of the Act read with rule 3 of the Withholding Rules. The respondent neither appeared before the Assessing Officer (AO) nor filed any reply.

05. The Assessing officer imposed the following penalties:-

Section invoked	Reason & decision	Amount
43(11)	The person failed to e-file the monthly Sindh sales tax withholding statement for the tax periods from December, 2017 to January, 2020. Therefore, the penalty amounting to Rs.220,000/=(10,000*22 tax periods) and Rs.81,677/- = (1,633,333*5% of SST deposit) has been established.	301,667/-
43(12)	The person failed to e-file the monthly Sindh sales tax withholding statements for the tax periods from December, 2017 to January, 2020 Therefore, the penalty amounting to Rs.220,000/=(10,000*22 tax period) and Rs.82,667/- =(1,633,335*5% of SST deposited) has been established.	301,667/-



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06. The respondent challenged the said OIO by way of filing of time barred appeal under section 57 of the Act before Commissioner (Appeals), SRB who allowed the appeal of the respondent and held as under:-

".....It is an established principle in chain of judgment of the superior courts that a punitive (ex-parte) order is to be passed on the day, on which such default (entailing punitive order) takes place. It is an admitted fact that hearing was fixed on 24 September, 2021, whereas the OIO was passed on 1st October, 2021. In response to such fact the submission of the respondent was that he waited for any adjournment from the Appellant side and he was also busy in day to day operational activities, therefore could not pass the OIO on such day of default. The intention of the respondent as is appearing from his submission is that he intended to adjourn the matter, therefore the OIO was not passed on the day of default. In such a situation it is apparent that the OIO was not legal, for not having passed on the day of default and also in presence of intent to adjourn the matter".

07. The learned AC submitted as under:-

i. The learned Commissioner (Appeals) (CA), SRB was not justified to delete the penalties rightly and legally imposed by the AO.

ii. The facts of the order relied upon by CA, SRB in the OIA were distinguishable and were not applicable to this case.

iii. The CA, SRB was not legally justified to allow a time barred appeal after holding that the delay could not be condoned.

iv. The passing of an exparte order other than on the date of hearing was not an illegality and was an irregularity and could be ignored.

v. The reported case relied upon CA, SRB was in a subsequent case was declared bad law.

08. The learned advocate for the appellant submitted as under:-

i. The order of the CA, SRB was in consonance of the earlier order of the superior courts.



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ii. The penalties imposed were harsh and not in accordance with law and the AO has no jurisdiction to impose such penalties in contravention of the provisions of the Act..

iii. The AO by imposing two penalties for one alleged offence has caused double jeopardy to the respondent.

iv. The CA, SRB has rightly passed the OIO which do not suffer from any legal infirmity.

09. We have heard the learned representative of the parties and perused the record.

10. The allegation against the respondent was that it had not e filed monthly withholding statements during the tax periods December-2017 to January-2020. The AO imposed two penalties upon the respondent provided under Serial No. 11 and 12 of the Table under section 43 of the Act. The first penalty under Serial No. 11 was imposed for violating notification issued under the Act. The penalty provided was Rs.10,000/= or five percent of the tax payable for the tax periods whichever is higher. The second penalty under Serial No. 12 was imposed for contravening the provisions of the Act and rules made thereunder for which no penalty was specifically provided in the section. The penalty provided was Rs.10,000/= or five percent of the tax payable for the tax periods to which the offence relates, whichever is higher.

11. Both these penalties could not be imposed simultaneously simply for the reason that the penalty under serial No. 12 could only be imposed when no other penalty was specifically provided in section 43 of the Act. When the AO imposed penalty under Serial No.11 it could not be said that no other penalty was specifically provided in section 43 of the Act.

12. The AO imposed both type of the penalties provided under Serial No. 11 and 12 of section 43 of the Act. In both the provisions in between the two types of penalties the word "or" was used which shows that both the penalties are disjunctive and only one penalty which is higher could be imposed and not both the penalties as done by the AO.



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13. In this matter there was no allegation in the SCN that the respondent has withheld the SST but had not deposited the same with SRB. There was no SST payable during the tax periods to which the offence relates and the second type of penalty which relates to payable tax could not be imposed.

14. The AO by imposing two types of penalties under different provisions of section 43 of the Act and by imposing both the penalties provided in the provisions committed illegality which made the OIO illegal and without jurisdiction. The law is very clear on the point that no limitation run against an order without jurisdiction and void. In the reported case of Land Acquisition Collector vs. Sarfaraz, PLD 2001 SC 514 it was held as under:-

"It is settled law that the bar of limitation would not operate in respect of void orders but not in respect of erroneous orders. The question of ' limitation may not, therefore; arise in respect of a judgment which is a nullity in law, void or ultra vires the statute or the constitution. In point of fact, if an order is without jurisdiction and void, it need not even be formally set aside as has been held in the cases of Ali Muhammad v. Hussain Bakhsh PLD 1976 SC 37 and Ch. Altaf Hussain and others v. The Chief Settlement Commissioner PLD 1965 SC 68.

15. I am satisfied that the CA, SRB has rightly condone the delay in filing of appeal and while setting aside the OIO has not committed any illegality warranting interference by this forum. However it appears necessary to clarify that Commissioner (Appeals) was not vested with the power to allow the department to issue fresh notice for the same cause on similar facts. The issuance of fresh notice and adjudication thereof amounts to denovo trial which is specifically prohibited under sub-section (2) of section 59 of the Act.

16. The department has filed a frivolous appeal despite the directions of the SRB Board not to file such appeals. It is apparent that the Commissioners, SRB are not following the instructions of the SRB, Board contained in Standing Order No. No. 01/2019 dated 3rd June, 2019 and were granting approval of filing of appeal mechanically without application of mind and considering the merit of the appeal. The concerned Commissioner who allowed filing of such frivolous appeal is delinquent in



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discharging his function and action for violating the instructions contained in the Standing Order No. 01/2019 should be initiated against him.

17. The Honorable Supreme Court of Pakistan has also deprecated the practice of filing of frivolous appeals by the department and in the reported case of Government of Pakistan through Chairman FBR Versus Hazrat Hussain and others (2018 SCMR 939) 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."

18. 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. 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.

Karachi:

Dated: 24.10/2022


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Copy Supplied for compliance:

- 1) The Assistant Commissioner, (Unit-34), SRB, Hyderabad for compliance.
- 2) The Respondent through Authorized Representative.

Certified to be True Copy

Copy for information to:-

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


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APPELLATE TRIBUNAL
of SINDH REVENUE BOARD
Order issued on 24-10-2022

Order Dispatched on 24-10-2022

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