

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

SB-I

APPEAL NO. 163/2022

(ARISING OUT OF APPEAL NO. 24/2019)

M/s Gateway Express Shipping (Pvt.) Ltd

(SNTN: S3157492-7)

4th Floor, Beharia Complex-IV,

Chaudary Khaliq-uz-Zaman, Road,

KarachiAppellant

Versus

Assistant Commissioner, (Unit-05), SRB Karachi

2nd Floor Shaheen Complex,

M.R. Kiyani Road, Karachi

Date of Transfer of Appeal 02.06.2022

Date of hearing 18.10.2022

Date of Order 20.10.2022

None present for appellant despite service of notice through courier service.

Mr. Tasleem Ahmed Ghumro, AC-SRB, (Unit-05) for respondent.



ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal was filed by appellant before the Commissioner (Appeals-II), SRB under section 57(1) of Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) challenging the Order-in-Original (hereinafter referred to as the OIO) No 20 of 2019 dated 15.02.2019 passed by Mr. Muhammad Faraz, Assistant Commissioner, (Unit-05), SRB Karachi, and has been transferred to the Tribunal under section 59 (7) of the Act for treating the same as an appeal against the order of Commissioner (Appeals-II) for disposal in accordance with law.

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02. The brief facts as stated in the OIO were that the appellant was engaged in providing/rendering services as Shipping Agent falling under Tariff Heading 9805.1000 of the Act which was chargeable to Sindh Sales Tax (SST) at rate of 13% with effect from 1st July, 2016 (14% during 2015-2016, 15% during 2014-15 and 16% from July, 2011 to till June, 2014).

03. It was alleged that the appellant had admitted vide its letter no. Nil dated 15.10.2018 and meeting held on 17.10.2018 that it had not charged SST on Agency fee to their foreign principals but it had agreed to deposit SST on Agency fee for the period from July-2014 to June-2018 amounting to Rs.1,153,222/-.

04. It was further alleged that despite availing sufficient time the appellant failed to deposit the admitted amount. Therefore, the appellant was served with a Show-Cause Notice dated 26.12.2018 to explain as to why the SST amounting to Rs.1,153,222/- should not be recovered under section 47(1A) (a) of the Act. The appellant was also called upon to explain as to why default surcharge under section 44 of the Act and penalties under Serial Number No. 3, 6(d) and 11 of the Table under section 43 of the Act should not be imposed for the violating the provisions of the Act and the Rules framed thereunder.

05. The appellant deposited the principal amount of SST on 14.01.2029 before passing the OIO and this fact was confirmed in para 5 of the OIO. However, despite payment of SST before passing of the OIO the Assessing Officer imposed penalty of Rs. 57,661/- (being 5% of the total payable amount of Rs.1,153,222/-) under Serial No. No.3 of the Table under section 43 of the Act.

06. The appellant and its representative were called absent despite service of notice through courier service. The report of courier shows that the notice was received by one Nadir.

07. Mr. Tasleem Ahmed Ghumro AC-SRB for respondent submitted that the appellant had already deposited the adjudicated amount of

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Rs.1,153,222/- before passing of OIO and this appeal was filed against imposition of penalty of Rs.57,661/- under serial No. 3 of the Table under section 43 of the Act. He further submitted that by not paying the SST as prescribed by the Rules-2011 the penalty was rightly imposed.

08. I have heard the learned AC and perused the record made available before us.

09. It was not disputed that the appellant had deposited the SST even before passing of the OIO which clearly reflect its compliant attitude and it was entitled to some concession. Furthermore, under the law penalty proceeding is criminal in nature and before imposing penalty mensrea is required to be proved by the department which is lacking in this case. The intention of legislature has ever been is that purpose of levying penalty is to deter assessee from repeating the default in future but it cannot be made as a resource mobilization/revenue generation measure for the department.

10. The plain reading of Serial No.3 of Section 43 of the Act it is apparent that liability to pay sales tax is not a necessary consequence or corollary of non-payment of SST within the stipulated period. Furthermore In case of failure to pay SST within time the liability being not automatic would be determined by the appropriate authority as to whether or not there was any reasonable ground for default in payment of SST which could be considered to be wilful and deliberate.

11. The authority imposing penalty has the discretion to waive the penalty keeping in view the circumstance of each case. In the reported case of Collector Customs v. Nizam Impex (DB-SHC 0 2014 PTD 498 it was held as under:-

"9.....We are, in agreement with the learned counsel for respondent that ample law is available on the point that imposition of penalty was illegal where the evasion of duty was not wilful as held by the Hon'ble Supreme Court of Pakistan in the case of D.G. Khan and others. Further reliance is placed upon the case of Messrs

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Lone China (Pvt.) Ltd. v. Additional Secretary, Government of Pakistan decided by the Hon'ble Lahore High Court, reported as PTCL 1995 CL 415 wherein it has been held that if the party did not act mala fide with intention to evade the tax, the imposition of penalty of additional tax and surcharge was not justified. In another case Additional Collector Sales Tax Collect-orate of Sales Tax Multan v. Messrs Nestle Milk Pak Ltd., Kabirwala and another, 2005 PTD 1850, it has been held that in such circumstances the Tribunal has discretion to waive/remite additional tax and penalties.

12. I am satisfied that there was no wilful default or malafide intention on the part of the appellant and the penalty was imposed without establishing mensrea.

13. The other point is "whether the transfer reference sent by Commissioner (Appeals), SRB was with in time or not?" The appellant filed appeal 57(1) of the Act before Commissioner (Appeals-II), SRB on 13.02.2019 who instead of hearing and deciding the appeal himself within the time provided in law transferred the same to this Tribunal under section 59(7) of the Act vide Report dated 02.06.2022 after considerable delay. The transfer of appeal to the Tribunal for decision is to be treated as appeal filed against the order of Commissioner (Appeals), SRB.

14. None of the parties in the instant appeal have provided proper assistance to the Tribunal in this regard. This point was also raised in other appeals transferred to the Tribunal, and the same would be decided on merits accordingly.

15. Before parting with this order I want to draw the attention of the learned Chairman and SRB-Board towards the slackness shown by the then Commissioner (Appeals) in deciding this appeal which do not require any details inquiry and arguments. The learned Board and Chairman should take notice of such slackness on the part of the officers of SRB which clearly diminish the reputation of SRB as a taxpayer friendly organization. This slackness bringing bad name for SRB as by such slackness the taxpayer was



deprived from his right of first appeal. The power of transfer of appeal to Tribunal should be rarely exercised and not frequently as being done and a number of appeals were transferred to the Tribunal.

16. In view of the above discussions the appeal is allowed and the penalty imposed by the Assessing Officer is waived. The copy of this order may be provided to the learned representatives of the parties.

Karachi.

Dated:20.10.2022

(Justice[®] Nadeem Azhar Siddiqi)

CHAIRMAN

Certified to be True Copy

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-06), SRB, for compliance

Copy for information to:-

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

Order Issued on

21/10/2022

Registrar

Order Dispatched on

21/10/2022

Registrar