

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT#
KARACHI

SINGLE BENCH-I

APPEAL NO. AT-178/2022

M/s Barq Services, (SNTN: 0238343)
House No. A-62 Govt. Employees Cooperative
Housing Society, Qasimabad, Hyderabad..... Appellant

Versus

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

Date of filing of Appeal: 24.11.2022

Date of hearing: 09.01.2023

Date of Order 18.01.2023

Mr. Danial Balouch, Advocate, for appellant.

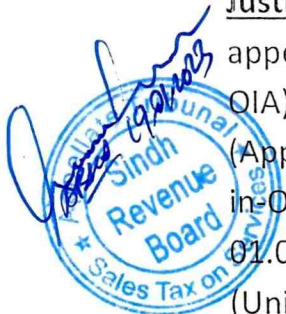
Ms. Zindagi Kalal, AC, SRB Hyderabad for respondent.

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. 129/2022 dated 27.09.2022 passed by the Commissioner (Appeals) in Appeal No. 296/2022 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 452/2022 dated 01.03.2022 passed by Mr. Tashkeel Hussain, Assistant Commissioner, (Unit-34), SRB Hyderabad.

02. The facts as stated in the OIO were that the appellant having SNTN: 0238343 was registered with SRB under the service category of "Contractor

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of Building", Tariff Heading-9824.1000-to the Second Schedule to the Sindh Sales Tax on Services, Act, 2011 (hereinafter referred to as the Act).

03. The allegations contained in the OIO were that during the scrutiny of online tax profile of the appellant available with SRB, it was observed that the appellant failed to e-file monthly Sales Tax Returns for the tax periods from August-2019 to October-2021 (27 tax periods).

04. The appellant was served with Show-Cause Notice (SCN) dated 10.12.2021 to explain as to why the penalty under Serial No. 2 of the Table under section 43 of the Act may not be imposed for contravention of the Act and Rules framed thereunder.

05. The appellant filed written reply dated 17.12.2021 and submitted that during the entire period it had not provided any service and had already applied for deregistration.

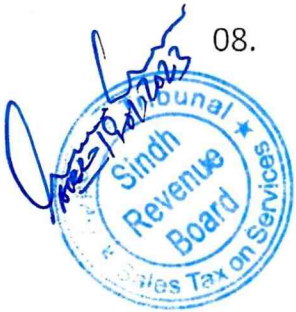
06. The Assessing Officer (AO) passed the OIO and imposed penalty of Rs.270,000/= under Serial No. 2 of the Table under section 43 of the Act and further directed the appellant to immediately e-file the monthly SST Returns.

07. The appellant challenged the said OIO before the Commissioner (Appeals) under section 57 of the Act. The Commissioner (Appeals) dismissed the appeal treating the same as time barred.

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

i. The appellant is a manufacturer of veterinary Medicine and for the purpose of participating in the tender issued by the Government got the registration on 16.04.2016 and from the date of registration till July, 2019 regularly filed its SST returns.

ii. The appellant could not procure any business after registration and file Null returns and has also applied for deregistration on 15.12.2021 and as per the direction of the department dated 07.02.2022 furnished all the required documents.



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iii. The SST returns could not be filed due to negligence of the representative of the appellant who was liable to e-file MONTHLY SST returns.

iv. The appellant had not received the copy of the OIO and coming to know about the OIO obtained certified copy and filed the appeal before the Commissioner (Appeals) on 10.08.2022.

v. The commissioner Appeals without considering the provision of section 75 of the Act treated the appeal as time barred.

vi. The Commissioner (Appeals) dismissed the appeal without any justification and without touching the merits of the case.

vii. The appellant by delayed filing of SST returns has not caused any monetary loss to the exchequer.

viii. Relied upon the earlier orders of the Tribunal in case of M/s Fumicon Services (Pvt.) Limited and M/s Ansari's Engineering Contractors.

09. The learned AC, SRB Hyderabad submitted as under:-

i. The appellant got voluntarily registration on 16.04.2016 and from its registration till date has not deposited any SST and in support of her contention produced Registration and Tax Profile of the respondent.

ii. The appellant has filed all previous NULL SST returns on 28.09.2022 after passing of the OIO on 01.03.2022 and OIA on 27.09.2022.

iii. The application of the appellant for de-registration dated 15.12.2021 was properly responded on 07.02.2022.

iv. The penalty of Rs.270,000/- was properly imposed under Serial No. 02 of Table under section 43 of the Act, 2011.



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v. The OIO was dispatched to the respondent on its available address on 01.03.2021 and was delivered to the appellant on 02.03.2021 and was received by one Sheeraz.

vi. The Commissioner (Appeals) has rightly treated the appeal filed by the appellant before him as time barred.

10. The learned advocate for the appellant in rebuttal submitted that none of his family member named Sheeraz or Sheez. The appellant has applied for the certified copy of the OIO on 06.07.2022 and referred to letter dated 15.07.2022 of SRB intimating the appellant that copy of OIO was properly served upon the appellant through courier service which was received by one Sheeraz on 02.03.2022. The appellant also filed an Affidavit to the effect that none of his family member is named Sheeraz.

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

12. The allegation against the appellant was that it had failed to e-file the monthly SST Returns for the tax periods August-2019 to October-2021 (27 tax periods).

13. The appellant has not declared any SST after its registration on 16.04.2016. The appellant had promptly filed SST Returns from the date of registration till July-2019. The excuse of the appellant that non-filing of SST returns was due to negligence of its representative was not a valid excuse. The appellant was responsible for the act and omission of its representative.

14. The Commissioner (Appeals) without proper inquiry into the service of OIO upon the appellant has treated the appeal as time barred. From the Courier Receipt and Tracking Report produced before me it was not known on which address the OIO was sent. Before treating the appeal as time barred the Commissioner (Appeals) was bound to examine whether the OIO was served upon the appellant as provided under section 75 of the Act

or not. The appellant is a proprietary concern and notice, order or requisition are required to be served as provided under section 75 of the Act. The Honorable High Court in an unreported judgment passed In the ST Ref No.74/2016 Nasir Khan & Sons vs. SRB, held as under:-

“Para 5 – From perusal of above provision, it is clear that any notice, order or requisition required to be served on an individual for the purpose of this Act, can be treated properly served on the individual, if personally served upon the individual, or in case of the individual under a legal disability the agent of the individual. However if the individual could not be served personally, then, in terms of Para ‘b’ of sub-section (1) of Section 75 such service can be effected through registered post or courier service to the individual’s usual address or last known address in Pakistan”.

15. The appellant by not filing the SST Returns within time has not caused any financial loss to the exchequer. It is true that the appellant was liable to file SST returns as provided under section 30 of the Act and Rules framed thereunder. The appellant before filing of this appeal has filed all the pending returns. The adjudicating authority has the discretion to impose or not to impose penalty. However, the penalty could be imposed keeping in view the overall circumstances of the case and discretion could be exercised in favour of the appellant where the element of willfulness, mensrea and malafide was lacking. In the reported case of Collector Customs, Sales Tax and Central Excise Appeal, Karachi versus Nizam Impex (Pvt) Ltd., 2014 PTD 498 a learned DB of High Court of Sindh held as under:-

“10. Thus in the light of case-law discussed above it is clear that imposition of penalty or additional tax under section 34 is not mandatory and the authorities have discretion to allow such concession. The important issue which needs to be examined is as to whether the evasion or non-payment of tax by the respondent was willful or mala fide.

11. As mentioned earlier, nowhere it is case of department that the respondent had mala fide intention, or that default was willful and that too to defraud the government. In such circumstances when the imposition of sales tax has been made, the demand of additional tax



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appears to be harsh and unjustified.

12. As a sequel of above discussion, we are of the considered view that the Tribunal has rightly held that the Department has failed to show that the default was willful or to defraud the Government, therefore, has justifiably remitted the payment of additional tax (emphasis supplied).

16. The instant case is on better footing as the penalty was not imposed on failure of the tax payer to pay due tax. In the instant case the penalty was imposed without establishing mensrea, willfulness and malafide on the part of the appellant, which is a necessary ingredient for imposing penalty.

17. In view of the above the appeal is partly allowed. The penalty to the extent of payment of penalty of Rs.220,000/=is remitted. The appellant is liable to deposit the penalty of Rs.50,000/= within fifteen days from the date of receipt of this order failing which it is required to pay penalty of Rs.100,000/=.

18. The appeal is disposed of. The copy of the order may be provided to the learned representative of the parties.

Karachi:

Dated: 18.01.2023

(Justice® Nadeem Azhar Siddiqi)

CHAIRMAN

Copy Supplied for compliance:

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

Copy for information to:-

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

Certified to be True Copy

18-01-2023
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order Dispatched on

19-01-2023

19-01-2023
Registrar

Order issued on

19-01-2023

18-01-2023
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