

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI

SB-I

APPEAL NO. AT-182/2022

M/s Money Master Currency Exchange  
Company-B (Pvt.) Ltd (SNTN: 2098011-6)  
Business Avenue, 26-A Block-6, PECHS,  
Main Shahrah-e-Faisal, Karachi. ....  
Appellant

**Versus**

The Assistant Commissioner (Unit-11),  
Sindh Revenue Board, (SRB),  
2<sup>nd</sup> Floor, Shaheen Complex,  
M.R. Kayani Road, Karachi.....  
Respondent

Date of filing of Appeal: 05.12.2022

Date of hearing: 07.02.2023

Date of Order: 23.02.2023

Mr. Muhammad Aleem, Advocate for the appellant.

Mr. Shareef Malik, DC-DR, SRB along-with Ms. Shazmina Abbas, SSTO-SRB for the 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. 132/2022 dated 06.10.2022 passed by the Commissioner (Appeals) in Appeal No. 94/2020 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 181/2020 dated 07.09.2020 passed by Mr. Yousuf Ali Magsi, Assistant Commissioner, (Unit-11) SRB Karachi.



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01. The facts as stated in the OIO were that the services provided or rendered by a Foreign Exchange Dealer or Exchange Company or Money Changer classified under Tariff Heading 9813.9000 of the second Schedule to the Sindh Sales Tax on services Act, 2011 (hereinafter referred to as the Act) chargeable to Sindh Sales Tax on Services (SST) at the tax rate 13% read with rule 40D of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules). It was further stated in the OIO that the appellant was engaged in providing taxable services covered under Tariff Heading 9813.9000 as per section 2(73), (45), (71) 4(1) and 24 of the Act.

03. It was alleged in the OIO that every Foreign Exchange Dealer or Exchange Company or Money Changer shall be required to obtain registration with the SRB, but he appellant failed to obtained registration with SRB. It was further alleged that providing or rendering taxable services without obtaining registration was tantamount to tax fraud as provided under section 2(94) of the Act.

04. The appellant was served with Notice dated 30.11.2011 which was replied by the appellant on 03.12.2011 in which it was stated that the appellant is doing business of money exchange as category "B" company as provided vide FE Circular No.o6/2004 issued by the State Bank of Pakistan (SBP) and the activities of category "B" company are related to sale and purchase of coins only. It was further stated that category "B" company was not engaged in providing any services and was not liable to be registered or enrolled.

05. The appellant was served with Registration Notice dated 10.12.2011 which was replied and the appellant declined to get itself registered with SRB.

06. The appellant was served with a Show-Cause Notice (SCN) dated 4<sup>th</sup> June, 2013 under section 24B of the Act to explain as to why it shall not be compulsory registered and why penalty prescribed under Serial No.1 of the Table under Section 43 of the Act-2011 should not be imposed. The appellant in response to the SCN submitted that the appellant being an exchange company of category "B" was not providing any taxable services and was not required to register with SRB.



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07. The Assessing Officer (AO) passed OIO for compulsory registration of the appellant under Section 24B of the Act and imposed penalty of Rs.100,000/- under Serial No.1 of the Table under section 43 of the Act.

08. The appellant challenged the OIO by way of filing appeal under section 57 of the Act before the Commissioner (appeals), SRB, which was dismissed vide OIA dated 06.10.2022. The operating part is reproduced as under:-

*"6. In view of the all above legal and factual position, I am of the considered view that the impugned order for compulsory registration does not suffer from any legal infirmities as Appellant is an exchange company of Category B and is authorized by the State Bank of Pakistan to deal in the business of foreign exchange dealer/money changer. Thus, the Appellant's business activity is squarely covered under tariff heading 9813.9000 of the Second Schedule to the Act, 2011 and is taxable under section 8 read with section 2(45) and 3 of the Act, 2011. Accordingly, the Appellant is very much liable to be registered with SRB As regard to the penalty imposed under serial No.1 of the table under Section 43; the Appellant's services are taxable since 01.07.2011. It is evident from the body of the impugned order that the Respondent through various notices informed Appellant as regard to his liability towards the sales tax registration with SRB, However, despite being cognizant of the constitutional mandate as provided to the provinces, Appellant still failed to make compliance of the explicit provisions of law. Therefore, I hold that the penalty under serial No.1 of the Table under section 43 of the Act, 2011 was rightly imposed upon the Appellant. In light of the above discussion, I do not find any illegality in the impugned order and the same is upheld in toto".*

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

- i. The AC imposed un-justified penalty of Rs.100,000/- and erroneously confirmed by the Commissioner (Appeals).
- ii. The penalty of Rs.100,000/- could only be imposed if the appellant failed to complying with the OIO and failed to provide the necessary details to the AC for completion of Registration Profile and while the appeal is pending before the Commissioner (Appeals), SRB and the SRB Tribunal it could not be said that OIO was not complied with.

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iii. The services provided or rendered by Foreign Exchange dealer or Exchange Company or Money Changers is for the time being exempted from the payment of SST under the Exemption Notification No: SRB-3-4/7/2013 dated 18<sup>th</sup> June 2013 (available on page 469 of the Book namely Sindh Sales tax on service Act 2011, 12<sup>th</sup> Edition by Mr. Tarique Najeeb Chaudary) and appellant was not liable to deposit SST and was also not required to file monthly sales tax returns.

iv. He submitted that without prejudice to his pleas raised above the necessary details as asked by learned SSTO will be provided within one week from today.

10. The learned SSTO-SRB submitted as under:-

i. The appellant was providing taxable services and despite that for the time being exemption is available under the above Exemption Notification the appellant was required to get registration under section 24 of the Act

ii. The appellant despite passing of the OIO and OIA has failed to provide necessary details for completion of its Registration Profile with SRB and the penalty of Rs.100,000/- under Serial No.1 of Table under section 43 of the Act was rightly imposed and confirmed by Commissioner (Appeals), SRB.

iii. The appellant is providing taxable services and is a person liable to be registered and is covered under the definition of registered person provided under section 2(71) of the Act and was liable to file SST Returns since the inception of the Act under section 30 of the Act read with rule 12 and 13 of the Rules.

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

12. The case relates to compulsory registration of the appellant under section 24B of the Act read with Tariff Heading 9813.9000 of the Second Schedule to the Act and rule 40D of the Rules. Section 24 of the Act provides that registration will be required for all persons who are resident and providing services listed in the





Second Schedule to the Act from their registered office or place of business in Sindh. Section 24B of the Act provides that if a person is required to be registered under the Act and that person has not applied for registration, the officer of the SRB shall, after such enquiry as he may deemed fit and after notice, 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.

13. The appellant is a resident person and is an authorized dealer of foreign exchange and is involved in selling and purchasing currency covered under Tariff Heading 9813.9000 of the Second Schedule to the Act. The services provided by the appellant for the time being are exempted from payment of SST. However this will not make any difference as being a provider of taxable services the appellant was required to be registered.

14. From the above discussion it is clear that the appellant is providing or rendering taxable services with in Sindh and since the appellant failed to get voluntarily registration it was rightly compulsory registered 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. The 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 a notice or an order of compulsory registration, the minimum penalty shall be Rs. 100,000/-. It has not been discussed in the OIO as well as OIA as to what was the compliance (requirement) of compulsory registration, which the appellant failed to comply. It was also not discussed in the OIO and OIA why maximum/higher penalty of Rs.100,000/= was imposed instead of minimum/lessor penalty of Rs.10,000/=. When two types of penalties are provided under law the Assessing Officer is duty bound to justify the imposition of maximum penalty. The two types of penalties are provided to cater different

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situations. It has not been discussed under which situation lessor penalty can be imposed and under what situation the maximum penalty can be imposed.

16. The appellant during the pendency of appeal before the Tribunal provided the details required by the AC to complete the Registration Profile. The appellant has also started filing SST returns from October-2020 and filed the same till December-2022.

17. In view of the above the appeal is partly allowed to the extent of reducing of penalty from Rs.100,000/= to Rs.10,000/=. The appellant is required to deposit the penalty of Rs.10,000/= with SRB with in fifteen days from the date of receipt of this order.

18. The appeal is disposed of. Coy of this order may be provided to the learned representatives of the parties.

Karachi.

Dated: 23.02.2023

(Justice Nadeem Azhar Siddiqi)

CHAIRMAN

Copies supplied to:-

1. The Appellant through Authorized Representative.
2. The Assistant Commissioner, SRB, Karachi.

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office copy
- 5) Guard file.

Certified to be True Copy

24-02-2023  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

24-02-2023  
Order Dispatched on.....

Registrar

24-02-2023  
Order issued on.....

Registrar