

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI

APPEAL NO. AT-75/2022

M/s Citizen Security Services (Pvt.) Ltd.
(SNTN: 7942010-5)
Flat No. A/4, SB -12, Bait-ul-Furqan Building,
Hospital Main University Road,
Gulshan-e-Iqbal, Karachi.Appellant

Versus

The Assistant Commissioner (Unit-15),
Sindh Revenue Board (SRB),
2nd Floor, Shaheen Complex,
M.R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal: 16.06.2022
Date of hearing: 18.10.2022
Date of Order: 25.10.2022

Mr. Nadir Hussain Abro, Advocate for appellant.

Mr. Zohaib Awan, AC-(Unit-15), SRB 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. 42/2022 dated 16.04.2022 passed by the Commissioner (Appeals) in Appeal No. 164/2019 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 174/2017 dated 19.06.2017 passed by Mr. Zaheer Hussain, Assistant Commissioner, (Unit-06) SRB Karachi.

(Signature)

02. The facts as stated in the OIO were that the appellant was registered with SRB having SNTN: 2513642-9, for providing or rendering the taxable services classified as the "Security Agencies" falling under Tariff Heading 9818.1000 of the 2nd Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred as the Act) chargeable to Sindh Sales Tax (SST) at the reduces rate of 10% on the value of the taxable services under section 3, 8 and 9 of the Act read with SRB Notification No.SRB-3-4/6/2013 dated 18.06.2013 and SRB Notification No.SRB-3-4/8/2013 dated 01.07.2013 and rule 42D of the Sindh Sales Tax on Services Rules, 2011 (hereafter referred to as the Rules).

03. It was alleged in the OIO that the during the scrutiny of SRB tax profile of the appellant it was revealed that the appellant has failed to deposit the due tax and also failed to e-file their monthly SST returns with SRB for the tax periods July-2013 to February- 2017 as required under section 17 and 30 of the Act read with rule 12, 13, 14 and 27 of the Rules.

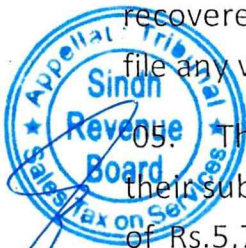
04. The appellant was served with a Show-Cause Notice (SCN) dated 28.04.2017 to explain as to why penalties provided under Serial NO. 2 & 3 of Table under section 43 of the Act should not be imposed for contravention of the provision of section 3, 8, 9, 17 and 30 of the Act and Rules made thereunder and also as to why default surcharge may not be recovered under section 44 of the Act. The appellant neither appeared nor file any written response to the SCN.

05. The Assessing Officer (AO) passed OIO directing the appellant to file their subject tax returns and deposit the due tax amount along with penalty of Rs.5,750,661/-. Besides, the AO also imposed 5% penalty on total tax payable under section 43(3) of the Act along with default surcharge under section 44 of the Act (to be worked out at the time of payment).

06. The appellant challenged the said OIO by way of filing of appeal under section 57 of the Act before Commissioner (Appeals), SRB (CA, SRB) who while dismissing the appeal for non-prosecution held as under:-



M. S.



"6. The appellant has failed to appear in person or through pleader despite of the hearing Notices as such and sought adjournments for uncertain period of time. Accordingly, the appeal is hereby dismissed in non-prosecution. The appellant is directed to pay the adjudged amounts as per the OIO forthwith without fail. Order accordingly".

07. Mr. Nadir Hussain Abro, the learned advocate for appellant submitted as under:-

i. The appeal before CA,SRB was filed against the harsh and non-applicable penalty imposed under serial No.2 of Table under section 43 of the Act which, made the OIO illegal and without jurisdiction, which fact the CA, SRB has conveniently ignored.

ii. The OIA was passed against the various judgments of the Superior Courts of Pakistan, which provided that the matters should be decided on merits.

iii. The appellant has produced sufficient material on the basis of which the appeal could be decided on merits.

iv. The AO calculated the penalty at his whims ignoring the statutory provision and various Orders of the SRB, Tribunal.

v. The appellant out of alleged penalty of Rs.5,750,661/- has deposited Rs.683,649/- on 28.03.2019 and Rs.87,772/- on 26.06.2019 making the total payment of Rs.771,421/- leaving the balance of Rs. 4,979,240/=, which payment was ignored by CA < SRB.

vi. The AO without determining or assessing the SST imposed penalty under Serial No.3 of Table under section 43 of the Act which was illegal and not warranted in law and against the Order of the Honorable High Court of Sindh.

vii. The imposing of penalty in fraction is against the various Orders of SRB, Tribunal and was erroneously imposed.

viii. The AC at the best subject to establishing mensrea could imposed penalty at the rate of Rs.5,000/= per month from July-2103 to June-2014 and Rs.10,000/- per month from July-2014 to February-2017.

ix. The extra penalty paid by the appellant may be refunded.



M. S.

x. The penalty paid could be considered under the Amnesty of May-2019 which provide exemption of whole amount of penalty and relied upon the reported case of Supreme Court of Pakistan in M/s IMC (Pvt.) Ltd. Vs Province of Sindh, 2019 PTD-1438.

08. Mr. Zohaib Awan the learned AC-SRB submitted as under:-

i. The penalty was rightly imposed in accordance with law under serial No.2 of Table under section 43 of the Act and the OIO was passed by the Officer-SRB having jurisdiction.

ii. The appellant continuously remained absent for various dates of hearing and the appeal was rightly dismissed in non-prosecution.

iii. The appellant has failed to prove that the penalty imposed in the OIO was harsh and non-maintainable and no material was produced on the basis of which the appeal could be decided on merits.

iv. The AO has rightly calculated the penalty strictly in accordance with the statutory provisions.

v. The appellant during pendency of appeal deposited Rs.771,421/- leaving a balance of Rs. 4,979,240/= which amount the appellant is liable to pay.

vi. The AO has rightly imposed penalty under Serial No.3 of Table under section 43 of the Act as the appellant has caused loss to public exchequer.

vii. The imposing of penalty in fraction is in consonance with the statutory provision.

viii. The penalty paid could not be considered under the Amnesty of May-2019 in view of clear language of the Notification which provided that "the Sindh revenue Board is pleased to exempt the whole of the amount of penalty and such of the amount of default surcharge as is in excess of the amount of default surcharge specified below". Clause (a) of the Notification provided as under:-

"(a) The principal amount of tax (as outstanding on the 21st May, 2019) alongwith 5% of the amount of default surcharge



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thereon if deposited during the period from 21st May, 2019 to 27th May, 2019”.

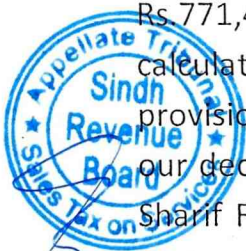
ix. The amount was not strictly deposited in terms of the Notification and the appellant was not entitled to the relief given in the Notification.

x. The penalty deposited was not in accordance with the OIO, however if the Tribunal consider that the same was imposed not in accordance with the earlier Orders of SRB, Tribunal the penalty already deposited may be considered as penalty deposited in full and final.

09. The learned advocate for the appellant in rebuttal submitted that though the Amnesty of May-2019 was applicable, however the appellant is satisfied if the penalty already paid may be considered as full and final.

10. I have heard the learned representative of the parties and perused the record made available before me.

11. The appellant was not found in arrears of SST on the date of passing of OIO and no tax liability was established in the OIO. The appellant has also filed all SST returns in compliance of the OIO. The penalty for non-filing of returns for the above mentioned tax periods amounting to Rs. 5,750,661/- was imposed out of which the appellant had already deposited Rs. 771,421/- leaving a balance of Rs. 4,979,240/=. The penalty was calculated and imposed upon the appellant in contravention of the provision of law and in ignorance of the various Orders of this Tribunal. In our decision dated 21.09.2020 passed in Appeal No. AT-12/20020, M/s M. Sharif Rajput Enterprises, Hyderabad Versus Assistant Commissioner, SRB, Hyderabad relying upon the earlier decisions of the Tribunal a) Appeal No. AT-92/2016 M/s Slingshot (Pvt) Limited versus Assistant Commissioner, (Unit-21), SRB, Karachi decided on 05.01.2017, b) Appeal No. AT-47/2018, M/s Fumican Services versus Assistant Commissioner, SRB, decided on 16.10.2018 c) Appeal No. AT-175/2018 AC-SRB versus Powertech Switchgear Services, decided on 22.02.2019. It was very categorically held as under:-



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“16. It is provided at Sr. No.2 of Table of section 43 of the Act that where any person fails to furnish a return within the due date such person shall be liable to a penalty of Rs.10,000/= per month or a **fraction** (emphasis supplied) 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”.

17. In the above provision of the Act per month means per tax return as the tax period defined in sub-section (95) of section 2 of the Act provides that “tax period means a period of one month or such other period as the Board may, by notification in the Official Gazette, specify.” Furthermore the Assessing Officer has incorrectly calculated penalty in fraction. In the provision at S. No.2 of Table of section 43 of the Act the word “fraction” denotes that in case of defaults of more than ten days the penalty for full month was to be imposed. Therefore for non-filing of monthly return penalty can only be imposed at Rs.10,000/= per month”.

12. In view of the above I hold that for the tax periods from July-2013 to June-2104 (12 months) the penalty could be imposed @ Rs.5,000/- per moth totaling to Rs.60,000/=. The penalty from July-2014 to February-2017 (32 months) could be imposed @ Rs.10,000/- per moth totaling to Rs.320,000/=. The total penalty payable by the appellant comes to Rs.380,000/- against which the appellant has already deposited Rs.771,421/-

13. As far as the penalty imposed under Serial No. 3 of the Table under section 43 of the Act it is suffice to say that in absence of assessment of tax liability under section 23 of the Act the penalty under this provision could not be imposed. In the earlier decision dated 07.01.2016 passed by the Tribunal in Appeal No. AT-52/2014, Television Media Network Versus Commissioner (Appeals), SRB it was held asunder:-

“The Assessing Office has also imposed 210,000/- under Table 3 of section 43 on account of non-deposit of tax due. The Assessing Office has not passed any assessment order under section 23 of the Act. The penalty under Table 3 section of 43 can only be imposed if it is established that the taxable services against consideration has been provided or rendered but due tax has not been deposited. This fact is lacking in the present case”.

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14. The above order was challenged by SRB before the Honorable High Court of Sindh in referential jurisdiction in case of Sindh Revenue Board Versus Television Media Network, 2017 PTD 1225 wherein it was held as under:-

6. We may observe that, in the absence of determination of any sales tax liability through Assessment under Section 23 of the Sindh Sales Tax on Services Act, 2011, which may become due towards taxable services, such penalty in terms of Table 3 of Section 43 cannot be imposed. We do not find any error in the impugned order passed by the Appellate Tribunal, Sindh Revenue Board to this effect as it depicts correct legal position nor the learned counsel for the applicant could controvert the above legal position.

15. The appellant is not liable to pay any penalty imposed under Serial No. 2 of the Table under section 43 of the Act.

16. In view of above, this appeal is partly allowed and the penalty imposed by the Assessing Officer and confirmed by the Commissioner (Appeals) under Table 2 of section 43 of the Act is reduced from Rs.4,979,240/= to Rs.771,421/- which the appellant has already paid. In view of the circumstance of the case I do not find any justification to order for refund of the penalty already deposited.

17. The copy of this order may be provided to the learned representatives of the parties.

Karachi

Dated: 25.10.2022

(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-15), SRB, for compliance

Copy for information to:-

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

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

27/10/2022

Order Dispatched on

27/10/2022

Registrar

Regist