

IN THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI.
(Before: Mrs. Alia Anwer, Member Judicial)

Appeal No.AT-76/2023

M/s. Modern Motors (Pvt.) Ltd.,
7-CL-10, Modern Motors,
Beamount Road, PIDC,
Karachi.

..... appellant

Versus

1. The Commissioner (Appeals-III)
Sindh Revenue Board,
Karachi.

2. The Assistant Commissioner (Unit-29),
Sindh Revenue Board,
Karachi.

..... respondents

Mr. Amanat Ali, advocate for appellant
Mr. Shareef Malik, DR for respondents

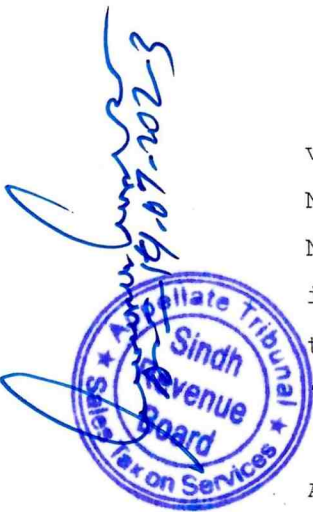
Date of hearing: 13.07.2023

Date of order: 13.07.2023

O R D E R

The appellant has assailed the order dated 19.04.2023
vide Order-in-Appeal (*hereinafter referred to as "the first Appellate Order"*)
No.97/2023 passed by the Commissioner Appeals-III in Appeal
No.225/2023 whereby the penalty, amounting to Rs.54,836/-
imposed in terms of S.No.3 of the Table under section 43 of
the Sindh Sales Tax on Services Act, 2011 (*hereinafter referred to as*
"the Act, 2011") by the Assistant Commissioner (Unit-29) vide

Appellate Tribunal, SB-II, Sindh Revenue Board.



Handwritten signature of Alia Anwer and a blue rectangular stamp of the Appellate Tribunal, Sindh Revenue Board, Member Judicial.

Order-in-Original (*hereinafter referred to as "the Original Order"*) dated 28.02.2023, has been maintained.

2. Learned counsel for appellant submits that appellant has already paid the principal amount as well as the default surcharge imposed as per "*the Original Order*". He contended that Learned Commissioner Appeals held in Order-in-Appeals that no *mens rea* is established therefore; she waived one of the penalties imposed in terms of S.No.6(d) of the Table under section 43 of the Act, 2011. Learned counsel argued that in view of such observations, imposition of penalty amounting to Rs.54,836/- imposed in terms of S.No.3 of the Table under section 43 of the Act, 2011 is unjustified and appellant is entitled to waiver thereof. In support of his arguments learned counsel placed reliance upon the case law i.e. 2020 PTD 1964, 2009 PTD (Trib.) 500, 2006 PTD (Trib.) 196, 2004 PTD 1179 (S.C.), 2002 PTD (Trib.) 300 and PTCL 1995 CL 415.

3. Learned departmental representative candidly conceded the arguments advance by learned counsel for appellant. He contended that SRB is taxpayer friendly and whenever good gesture is shown by the taxpayer department facilitates him to the best of its discretion. He submitted his no objection to the waiver of penalty imposed wide impugned order.

4. There is no cavil to the proposition that *mens rea* is the basic ingredient to impose any of the penalty prescribed under the law. Term "*mens rea*" refers to the element of deliberate negligence or willful default which is something more than mere non-compliance of statutory provisions. To establish *mens rea* the Department must establish that non-compliance of statutory provision is based on malafide intentions. Perusal of

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Alia Anwer
ALIA ANWER
Member-Judicial
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

the show-cause notice, order-in-original and order in appeal shows that there was no allegation against the appellant in respect of deliberate or willful default, or to defraud the Government. There is no cavil to the proposition that imposition of penalty can only be treated as legal when evasion or nonpayment of tax by the taxpayer is willful or *mala fide*. In case the party did not act *mala fide* with intention to evade the tax the imposition of penalty is no justified. In this regard I am guided with the principle laid down in the case of ASSISTANT COMMISSIONER, SRB, KARACHI versus Messrs FALCON-I (PVT.) LTD., (2020 P T D (Trib.) 141) wherein it has been held that;

“17. The imposition of penalty is quasi criminal and presence of mens rea is mandatory as held in the reported judgment of Commissioner Income Tax v. Habib Bank Limited 2007 PTD 901 (DB SHC). It has been held that "13. There can be no cavil to the arguments of the learned counsel for the respondent that the penal provisions under the Income Tax Act are quasi-criminal in nature and mandatory condition required for the levy of penalty under section 111 is the existence of mens rea and, therefore, it is necessary for the department to establish mensrea before levying penalty under section 111. There is plethora of judgments of the superior courts of India and Pakistan from the very inception of Income Tax Act, 1922, on this point"..... In the reported judgment of Pakistan through Secretary Ministry of Finance v. Hard Castle Waud (Pakistan) PLD 1967 SC 1 it has been held that even in statutory offence the presumption is that mens rea is an essential ingredient for imposing penalty.”


5. It is the matter of record that appellant has already paid the principal amount along with default surcharge. Even otherwise the department has not alleged any *mala fide* or willful default against the appellant with intention to defraud the government. In such circumstances imposition of further penalty appears to be harsh and unjustified.

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6. In view of the above discussion, I am of the considered view that the findings of Commissioner (Appeals-III) pertaining to maintaining the penalty amounting to Rs.54,836/- imposed in terms of S.No.3 of the Table under section 43 of the Sindh Sales Tax on Services Act, 2011, suffer from illegality and material irregularity and the imposition of penalty upon appellant as per "the first Appellate Order" dated 19.04.2023 is liable to be set-aside, hence; instant appeal is hereby allowed. Let the copy of this order be provided/ sent to the parties or their representatives.


13/7/23
(ALIA ANWER)
Member Judicial
Appellate Tribunal,
Sindh Revenue Board.

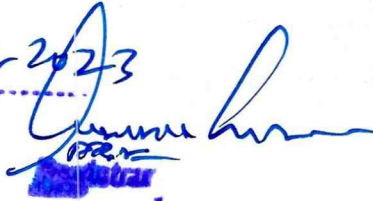
Karachi;
Dated: 13.07.2023.


Copy supplied to:-

1. The appellant,
2. The Commissioner (Appeals-III), SRB, Sindh,
3. The Assistant Commissioner (Unit-29), SRB, Karachi,
4. Office File, and
5. Record file.

Certified to be True Copy

14-07-2023
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order Dispatched on 14-07-2023

REGISTRAR

Order Issued on 14-07-2023

REGISTRAR