

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

Appeal No.AT-79/2023

M/s. Fazal Impex,
Plot No.C-78, Block-C,
North Nazimabad,
Karachi.

..... appellant

Versus

The Assistant Commissioner Unit-28,
Sindh Revenue Board,
Karachi.

..... respondent

Mr. Nadir Hussain Abro, advocate for appellant.
Mr. Muzammil Hussain, AC Unit-28, for respondent.

Date of hearing: 29.05.2023

Date of order: 06.07.2023

ORDER

The appellant has assailed the order dated 25.06.2018¹ passed by the Assistant Commissioner (Unit-28) vide Order-in-Original No.677 of 2018 (*hereinafter referred to as "the Original Order"*) whereby the appellant has been directed to submit true and correct sales tax return for the tax period from July-2014 to June-2015, under section 30(1) of the Act, 2011¹, read with rule 14 of the Rules, 2011². Appellant has further been directed to pay penalty amounting Rs.4,980,000/- for contravention of above provisions. While taking a lenient view, appellant was allowed five-days time

1. The Sindh Sales Tax on Services Act, 2011.
2. The Sindh Sales Tax on Services Rules, 2011.

Appellate Tribunal, SB-II, Sindh Revenue Board.

ALIA ANWER
Member Judicial
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

to file returns for the above said period along with 50% of the above mentioned penalty, to get a waiver of remaining 50% penalty.

2. The appellant i.e. M/s. Fazal Impex, (vide tariff heading 9815.5000 of the Second Schedule of the Act) got registered with SRB under the principal activity of "Technical, Scientific and Engineering Consultants", which are chargeable to SST at the rate of 15% on the value of taxable services.

3. Per Original Order, appellant's online record revealed that he had not submitted Sales Tax Return for the period July-2014 to June-2015, therefore; vide email dated 27.12.2017 the appellant was required to file true and correct Sales Tax Return for the said period. On account of non-failure of such compliance show-cause notice dated 12.01.2018 was issued to the appellant. In response to the above show-cause notice, appellant's representative appeared and sought time to gather information pertaining to the above mentioned tax period but despite availing such opportunity, appellant did not submit any satisfactory reply nor did he submit the requisite Sales Tax Return, therefore; the Assistant Commissioner (Unit-28) passed "the Original Order" requiring appellant to submit true and correct sales tax return for the tax periods from July-2014 to June-2015. Appellant had further been directed to pay penalty amounting Rs.4,980,000/- for contravention of section 30(1) of the Act, 2011, read with rule 14 of the Rules, 2011. While taking a lenient view, the Assistant Commissioner (Unit-28) allowed appellant five-days time to file returns for the above said period along with 50% of the above mentioned penalty, to get a waiver of remaining 50% penalty.

Appellate Tribunal, SB-II, Sindh Revenue Board.


ALIA ANWER
Member Judicial
APPELLATE TRIBUNAL
SINDH REVENUE BOARD



4. Being aggrieved by and dissatisfied with the observations of the Assistant Commissioner (Unit-28), appellant filed instant appeal before Commissioners (Appeals), which has been transferred to this Tribunal under section 59(7) of the Act.

5. Learned counsel for appellant submits that "*the Original Order*" is bad in law and on facts. He argued on 14.07.2017 appellant got itself registered with SRB under the principal activity of "Technical, Scientific and Engineering Consultants", (vide tariff heading 9815.5000 of the Second Schedule of the Act). He contended that prior to that appellant was carrying on business of supply of goods. Learned counsel argued that vide email dated 27.12.2017 learned Assistant Commissioner required appellant to file true and correct Sales Tax Return for the period July-2014 to June-2015, when eventually no activity of providing service was being carried out. He argued that appellant intimated learned Assistant Commissioner about the factual position but instead of considering the above fact, show-cause notice was issued to the appellant. Learned counsel argued that in response to the above show-cause notice, appellant's representative appeared and submitted the transaction details/ invoices for the period, as per mentioned in the show-cause notice, but same was also not considered by learned Assistant Commissioner, resulting into passing "*the Original Order*". Learned counsel referred to invoices pertaining to the tax period mentioned in show-cause notice. Per learned counsel none of those transactions show activity of providing taxable service, rather the same show supply of goods. He prayed for setting aside "*the Original Order*".


Appellate Tribunal, SB-II, Sindh Revenue Board.



Alia Anwer
ALIA ANWER
Member Judicial
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

6. Mr. Muzammil Hussain, AC Unit-28, for respondent was apprised about the invoices referred by learned counsel for appellant and he conceded the arguments advanced by learned counsel for appellant. Mr. Muzammil Hussain, AC Unit-28, categorically admitted that department does not have any documentary proof to show appellant's activity of providing taxable service. He admitted that invoices produced by appellant for the period mentioned in show-cause notice pertains to supply of goods and not taxable service.

7. Keeping in view the arguments advanced by both the sides so also the invoices referred by learned counsel for appellant, I am of the considered view that appellant was not involved in activity of providing taxable service during the period from July-2014 to June-2015 and "the Original Order" passed by learned Assistant Commissioner suffers from legal infirmity requiring interference by this Tribunal, hence; instant appeal is hereby allowed. Resultantly, "the Original Order" dated 25.06.2018 passed by learned Assistant Commissioner stands set-aside. The copy of this order may be provided to the learned representatives of the parties.


6/7/23
(ALIA ANWER)
Member Judicial
Appellate Tribunal
Sindh Revenue Board.

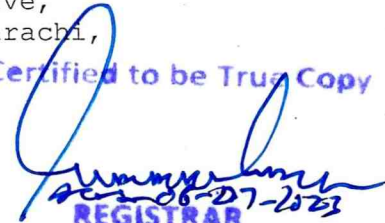
Karachi;
Dated: 06.07.2023.

Copy supplied to:-

1. The appellant through authorized representative,
2. The Assistant Commissioner (Unit-28), SRB, Karachi,
3. The Commissioner (Appeals), SRB, Sindh,
4. Office File, and
5. Record file.

Appellate Tribunal, SB-II, Sindh Revenue Board.

Certified to be True Copy


26-06-27-2023
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order Dispatched on-----

Order issued on-----

Registrar

Registrar