

**APPELLATE TRIBUNAL INLAND REVENUE GOVERNMENT  
OF PAKISTAN DIVISION BENCH, MULTAN**

**STA No.63/MB/2023**

Mr. S.T. Industries, Mehdi Pur ...Appellant  
STR No. 0407870400273

Versus

The CIR, RTO-Multan. ...Respondent

Appellant by: Mr. Imran Ghazi, Advocate.  
Respondent by: Mr. Rab Nawaz, DR.

Date of Hearing: 08.05.2023  
Date of Order: 02.06.2023

**O R D E R**



**CH. MUHAMMAD AZAM (JUDICIAL MEMBER)**: By this order, we intend to dispose of above titled appeal filed by the appellant against the impugned order dated 01-06-2022 passed by the Commissioner Inland Revenue (Appeals) Multan on the grounds available in file 1<sup>st</sup> appeal was dismissed.

**BRIEF FACTS OF THE CASE**

2. That the registered person was legally required to file monthly sales tax returns under the Sales Tax Act, 1990 on or before due date as specified in Section 26 of the Act. During scrutiny of the Sales Tax Record, it was observed that registered person submitted the monthly sales tax returns and made payments for the period July 2019 to May 2021 after due dates of show cause notice dated 18.11.2021, culminated in passing order u/s 11(1) &

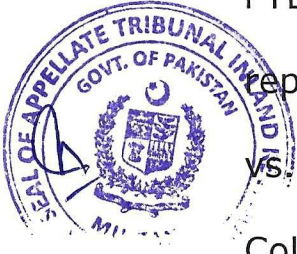
11(2) of the Sales Tax Act, 1990 for imposition of penalty as defined in Serial No.1 & 5 of the table to section 33 of the Act. Feeling aggrieved, the taxpayer preferred appeal before CIR(Appeals-I), Multan, who vide appellate order dated 01.06.2022 upheld the treatment meted out by the assessing officer, against which the registered person has come up in further appeal before this Tribunal.

### **ARGUMENTS OF AR**

3. It is argued that the department passed ex-parte OIO 15/2022 under Sales Tax Act, 1990 without providing proper opportunity of being heard which is unjust, unlawful and unwarranted. The department ignored the reply of show cause notice dated 18-11-2021. The department has not considered the replies and explanation given by the AR on several times in his office which is against the legal right of the appellant. Further contended that the appellant was facing difficulties to collect the requisite record /information in the situation of complete lock down in country by the Govt and where most of the employees/staff were absent from their duties due to corona virus lockdown. He has further argued that no default surcharge/penalty could be imposed in the manifest absence of demonstrable intent not to pay tax and / or a *mala fide in* refusal to pay tax. He cited the decision of Hon'ble Sindh High Court in SSTR No.191 of 2018 dated 06.05.2022 title CIR vs. M/s Byco



Petroleum Pakistan Limited. Reliance is also placed on D.G. Khan Cement vs. Federation of Pakistan reported as 2004 PTD 1179; Deputy Collector Central Excise vs ICI Pakistan reported as 2006 SCMR 626; Commissioner of Income Tax vs. Habib Bank reported as 2007 PTD 901; Additional Collector of Customs vs. M Hussain reported as 2016 PTD 2748; CIR vs. Tianshi International Pakistan reported as 2018 PTD 900; Fatima Fertilizer Company Ltd vs. Commissioner -II reported as 2021 PTD 484. The calculation of penalty and default surcharge is incorrect, unjust, unfair and baseless.



#### **ARGUMENTS OF DR.**

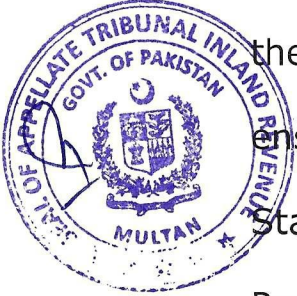
4. On the other hand, the learned DR defended the impugned actions by the Department. He contended that there is no infirmity in the impugned order and the same may be upheld by dismissing the appeal.

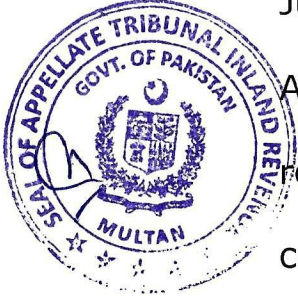
#### **FINDINGS**

5. We have heard the contentions of both the parties and perused the appeal file available before us. It is admitted fact that period of default in appeal i-e July 2019 to May 2021 relates to world-wide lock down due to Covid-19 pandemic. The maximum period of late filing of sales tax return and payment of due tax is 37 days which relates to March 2020 which due date as per Section 26 of the sales Tax Act, 1990 was 15 of April 2020 and that was first



month of Covid-19 emergency in Pakistan. There is no denying the fact that the provisions contain in section 33 of the Act are not charging provisions and are not provided for the purpose of generating revenue rather the purpose is to ensure compliance of different provisions given in the tax Statutes. A Division Bench of Sindh High Court in China Hub Power Generation Company vs. Pakistan in CP.D 3532 of 2020 dated 11.02.2021 has maintained that default surcharge ought not be imposed in a perfunctory manner and may only be warranted upon proper adjudication as to willful default and the presence of *mens rea*. Even though this judgment pertains to income tax, another Division Bench of Sindh High Court held in Tianshi International Pakistan vs. CIR reported as 2018 PTD 900 that section 34 of the Sales Tax Act 1990 was materially not different in scope from sections 161 / 205 of the Income Tax Ordinance 2001, relating to default and willful default. It is imperative to denote that the decision in Tianshi International was rendered in 2017, therefore, much after the amendment in section 34 of the Sales Tax Act 1990. In brief we can say that admittedly appellant/registered person was not given proper opportunity of hearing which was his legal right. Assessing Officer passed the order in hurry and similar conduct remained from CIR (A). Both the orders are set aside being illegal and not tenable in the eye of law.





Judgments referred above are applicable in this case. Appeal is accepted accordingly. File be consigned to the record room after issuance of copies to the parties concerned.

6. It is certified that order in hand is consisting of Five (05) pages and each page has been signed.

-sd-

**CH. MUHAMMAD AZAM**  
Judicial Member

-sd-

**DR. MUHAMMAD NAEEM**  
Accountant Member

Copy of the bench order forwarded to

1. The Appellant Mr. S.T. Industrial, Mehdi Pur.
2. The Respondent " " " "

BY ORDER

**ASSISTANT REGISTRAR**  
Appellate Tribunal Inland Revenue  
Multan

25.7.2023