

OFFICE OF THE COMMISSIONER (APPEALS)
PUNJAB REVENUE AUTHORITY, LAHORE

ORDER NO. 60/2023 Dated: 28-03-2023

Name of Taxpayer/Appellant	M/s New Munna Daal Chawal
Address of Taxpayer/Appellant	Corner Amin-Pur Bazar, Clock Tower, Faisalabad
PNTN	P2352682-3
Assessing Officer	Deputy Commissioner, PRA, Faisalabad
Sections of Assessment	Section 59-B and 48 (2) Serial No. 20 of the Punjab Sales Tax on Services Act, 2012 read with Rule 03 of The Punjab Electronic Invoice Monitoring System Rules, 2019
Revenue Involved	Rs. 100,000/-
No & Date of Impugned Order	23/2022-2023, 06-12-2022
Date of Hearing of Appeal	28-03-2023

Present.

- (1) Mr. Naeem Qasim Gill (Advocate) as Authorized Representative (AR) of the appellant.
- (2) Ms. Hina Noor as Departmental Representative, PRA, Lahore.



1. This appeal has been preferred against the Assessment Order No. 23/2022-2023 dated 06-12-2022 (the "**impugned order**"), passed by the learned Deputy Commissioner, PRA, Faisalabad (the "**assessing officer**") under section 48 (2) serial no. 20 of the Punjab Sales Tax on Services Act, 2012 (the "**Act of 2012**"). Through the impugned order a penalty of Rs. 100,000/- has been imposed for non-Installation of Electronic Invoice Monitoring System (EIMS).

2. Brief facts of the case are that M/s New Munna Daal Chawal (hereinafter referred to as the "appellant") is registered with the Punjab Revenue Authority (the '**Authority**') vide PNTN 2352682-3. As per rule 03 of the Punjab Electronic Invoice Monitoring System Rules 2019, a registered person having turnover of ten million rupees or above in financial year 2017-18 or in a subsequent financial year shall be monitored through e-IMS by the Authority. The impugned order reveals that the appellant was served with notice dated 12-08-2022 and reminder notice dated 03-11-2022 for the installation of EIMS and was provided with ample time to integrate the POS with Electronic Invoice Monitoring System. However, after a lapse of reasonable time, the appellant failed to make compliance to section 59B of the PSTS Act, 2012 read with Punjab Electronic Invoice Monitoring System Rules, 2019. Therefore, a Show Cause Notice (SCN) dated 22-11-2022 was issued to the appellant by the learned assessing officer wherein the appellant was charged with the violation of section 59B of the Act of 2012 read with Rule 03 of the Punjab Electronic Invoice Monitoring System Rules, 2019. Being dissatisfied with the reply of the appellant, the assessing officer passed the impugned order.



3. During the hearing, the learned AR of the appellant stated that the appellant was not liable to install EIMS as the annual turnover of the business of the appellant is below the threshold set by rule 3 of the Punjab Electronic Invoice Monitoring System Rules, 2019. The AR has submitted the returns filed by the appellant for tax periods covering July-2021 to June-2022 to corroborate his stance. The learned DR, on the other hand, contended that the appellant did not meet its mandatory statutory obligation of installing EIMS as per section 59B of the Act of 2012 read with The Punjab Electronic Invoice Monitoring System Rules, 2019.

4. Heard and record perused. In a tax law like Punjab Sales Tax on Services Act, 2012, there are certain statutory obligations that are required to be performed by the taxpayers. Under section 48 of the Act of 2012, the offences and penalties are provided in case of breach of some statutory obligations. In order to impose a penalty, the pre-requisite is the existence of *mens rea*.

5. In Coca-Cola Beverages Pakistan Ltd V. Customs, Excise and Sales Tax Appellate Tribunal, 2017 PTD 2380 [Lahore], the Division Bench of Lahore High Court, comprising Shahid Karim and Tariq Saleem Sheikh JJ laid down the jurisprudence on penalties in the following manner: -

"54. Jurisprudence that has evolved over the years is that penalty can only be imposed where there is willful evasion of duties and taxes. In Pakistan, through the Secretary, Ministry of Finance, Rawalpindi and others v. Hardcastle Waud (Pakistan) Ltd., Karachi (PLD 1967 SC 1), while dilating on Item 3-B of Section 167 of the Sea Customs Act,



1878, the Hon'ble Supreme Court held that it was incorrect to say that the said Item created an offence of absolute liability and was an exception to the general rule that mens rea was an essential element in the commission of a criminal offence. It ruled that even in the case of a statutory offence the presumption is that mens rea is an essential ingredient unless the statute creating the offence by express terms or by necessary implication rules it out. In Messrs D.G. Khan Cement Company Ltd. and others V. The Federation of Pakistan and others (2004 SCMR 456 = 2004 PTD 1179), the Apex Court held that in order to impose additional tax it should be seen whether the evasion or non-payment of tax was willful or mala fide. Therefore, every case should be decided on its own merits. Every default on the part of the registered person would not ipso facto make him liable for penalty or additional tax/default surcharge. The Revenue must establish that it was dishonest, willful or mala fide."

6. In the instant case, the pre requisite of mens rea (which is *sin qua non* for the imposition of penalty) or any willful default on the part of the appellant is missing. From the perusal of the record submitted by the AR, it is evident that the stance taken by the AR is correct.

7. In view of the above, the impugned order is **set aside**.



8. The appeal is disposed of in the above terms. This order consists of five (05) pages; all pages are duly signed and bear the seal of this office. A copy of this order shall be sent to the appellant and respondent officer in order to enable them to seek legal remedies against the order, if so desired.



(RABIA SHAH)

Commissioner (Appeals), PRA