

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

Appeal no:14/2017

M/s Car Planet Appellant

VERSUS

Assistant Commissioner (Unit-5) SRB Respondent

Mr. Faiq Raza Rizvi Advocate..... For Appellant

Mr. Liaquat Ali Bajeer AC. S.R.B..... For Respondent

Date of hearing: 29-11-2017

Date of order: 22-02-2018

ORDER

Mr. Muhammad Ashfaq Balouch:

Present appeal has been filed by the above named appellant, challenging order in appeal No: 271/2016 (hereinafter referred to as OIA) passed by Commissioner (Appeals) SRB, whereby Order In Original No:741/2014 dated 08th August, 2016 (hereinafter referred to as OIO) ,passed by Mr. Anbreem Fatima A.C unit-10 SRB Karachi was partly confirmed and penalty was conditionally reduced by 50%..

(2). Brief facts as disclosed in OIO are that appellant is rendering the services of car and automobile dealer, classified under tariff heading 9806.40000 of the Second Schedule of the Sindh Sales Tax on the services Act 2011 (hereinafter referred to as the "Act, 2011").

(3). Allegations against the respondent are that though appellant is providing taxable services pertaining to Act 2011 but failed to get compulsory registration therefore, penalty of Rs. 10,000/- for failure to



file application for registration before providing taxable services and Rs. 100000/- for non-compliance, both against the offense no 1 of the table of section 43 of the Act 2011, were imposed.

(4). Appellant aggrieved from the OIO filed appeal before the learned Commissioner (Appeals), S.R.B. which was partly allowed to the extent of 50% of the penalty amount, if the compliance is made within 15 days of receipt of that order. Appellant aggrieved from the order of Learned Commissioner (Appeals), S.R.B. filed present appeal.

(5). Mr. Syed Faiq Raza Rizvi advocate for the appellant has argued that appellant is involved only purchase, sale and trade of the cars, wherein no element of services or commission is involved. He has further argued that in show cause notice (herein after referred to as SCN), it not mentioned that any alleged evidence/survey report contrary to appellant version, was confronted. OIO is not speaking order in light of Sec 24(A) General Clauses Act, 1897. As per rule 4 of Rules 2011 requirement of registration is for the person who is providing taxable service.



(6). It was also argued that as per circular no: SRB-3-4/2/2013-8990 Karachi dated 8th Feb-2013. Powers of Board under section 24, 24A, 24B, 25 and 25A of SST Act 2011 has been given to Member (Operation) of S.R.B., whereas respondent falls under hierarchy of Member (Taxation).

(7). The last contention of Learned Counsel for the appellant was that Section 79 SST.2011 bind officer of SRB to follow the instruction of Sindh Revenue Board.

(8). Mr. Liaquat Ali Bajeer A.C SRB also argued that before Commissioner (Appeals) comments were not filed by the department because ONO passed on survey report shared by focal person of association of Car dealer, which was confidential. Learned AC (SRB) also stated that appellant admitted that he is indulged in business of Sales and Purchase of car but has failed to provide any documents or audit report.

(9). So far SRB circular No: SRB-3-4/2013/8990 dated 08-02-2013 is concerned it states that powers and functions of Board under section 24, 24 A, 24B, 25 and 25 A of 2011-Act, stand delegated to and shall be exercised by the Member (Operations) of SRB and by the respective/adjudicating Officer. After SCN, hearings / opportunities were extended to appellant but till passing of OIO the appellant has failed to appear before Assessing Officer. Hence, it cannot be claimed that opportunity of hearing was not provided to appellant.



(10). I have heard Learned Counsel for the appellant, Learned Assistant Commissioner SRB for the respondent and perused the record.

(11). The contention of Learned Counsel for the appellant that as per Circular No: 3-4/2/2013 8990 Karachi dated 8th Feb 2013, powers

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of the Board, under section 24,24A,24B,25 and 25A of the Sindh Sales Tax on Services Act 2011, shall be exercised by the Member (Operations) of SRB But Assessing Officer Member (Operation).

To proceed further, I have the benefit to reproduce the relevant portion of circular supra here as under:

“During the Board meeting No 1 of 2013, held on 7-January, 2013, the Sindh Revenue Board decided that the functions and powers of the Board under section 24, 24A, 24B, 25 and 25A of the Sindh Sales Tax Act 2011, stands delegated to and shall be exercised by the Member (Operation) of SRB and by the respective /adjudicating officer, not below the rank of and Assistant Commissioner-SRB”

(12). The plane reading of notification supra reveals that Assistant Commissioner SRB has the same powers as delegated to Member (Operation) and in case in hand the assessment completed by the duly authorized Assistant Commissioner of SRB therefore, this arguments of appellant side has no force.

(13). It appears from the record that department issued show cause notice to the appellant on the sole bases of survey report. It is admitted position that appellant did not appear before the Assessing Officer and had not filed any document before the Assessing Officer at the assessment stage.



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(14). The Learned Commissioner (Appeals) in Para 4 of OIA has observed as under:-

“The basis was the physical survey of the survey team, who did not provide any report but provided information as such visiting the site”.

From the perusal of above observations of Learned Commissioner (Appeals), the contention of Learned Counsel for the appellant appears correct that no such survey report/information was ever confronted with the appellant, which was subsequently, treated as base for compulsory registration and penalties under section 43(1) of Act 2011 and under serial 1 of the Table in Sec 43 of Act 2011.

(15). It is worthwhile to mention here that Respondent/Department has also not claimed that any such information or survey report of survey team was ever confronted to the appellant.

(16). In view of above when information/survey report which was treated as sole evidence against the appellant, was not confronted with appellant. Therefore, it would be just, proper and in the interest of justice, to set aside the impugned order and remanded back the matter to the Learned Commissioner (Appeals) with directions to provided opportunity to the appellant to give reply of the survey report/information, to submit the audited financial statements, income



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tax returns and other documents for the relevant tax period, to ascertain the nature of service rendered by the appellant.

(17). In the light of reasons recorded supra, impugned order is hereby set aside and matter is remanded back to the Learned Commissioner (Appeals) to decided the matter afresh keeping in view above directions.



(Muhammad Ashfaq Balouch)

Judicial Member

Copies Supplied to:

1. The Appellant through Authorized Representative.
2. The Deputy Commissioner (Legal) SRB
3. The Assistant Commissioner, SRB for compliance
Copy for information
4. The Commissioner Appeals, SRB
- ✓ 5. Guard File
6. Office Fill

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