

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

Appeal No.AT-44/2017

M/s Al-Hussain Traders Contractors Appellant

VERSUS

1/ Commissioner (Appeals), SRB, Karachi and
2/ Deputy Commissioner, SRB, Karachi Respondents

Mr. Jawad Zafar, Advocate For the Appellant

Mr. Shoaib Iqbal Rajkoti, Assistant Commissioner, SRB, Karachi ... For the Respondents

Date of hearing 22.02.2018

Date of Order 26.02.2018

ORDER

Ms. Razia Sultana Taher: This appeal has been filed by the appellant challenging the order in appeal No.65/2017 dated 20th May, 2017 passed by the Commissioner (Appeals) in appeal No.191/2016 wherein the Commissioner (Appeals) had stated that "the SCN and ONO are without jurisdiction hence the OIO is liable to be set aside" but in the next paragraph 9 of the order in appeal gave certain clarifications / observations / directives.

2. In short, the facts of the case as stated in the order in original are that the appellant are engaged in providing taxable services of construction / contractor falling under tariff heading 9824.0000 & 9814.2000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as SSToS Act, 2011) and subject to Sindh Sales Tax w.e.f. 1st July, 2011. The order stated that the appellant provided the taxable services of construction and did not come under the ambit of exemption as notified vide SRB notification No.SRB-3-4/7/2013 dated 18.06.2013 as the service recipients being engaged in commercial activity and ordered for the recovery of the outstanding amount alongwith default surcharge and also imposed penalty. The assessing officer also ordered for compulsory registration of M/s Al-Hussain Traders Contractors with SRB under Section 24-B of the SSToS Act, 2011.

3. The said order of the Assessing officer was challenged by way of filing of appeal before the Commissioner (Appeals) SRB who set aside the show cause notice and order in original as being without jurisdiction, explained the reasons in paragraphs 6 to 8 of the order in appeal. At paragraph 9 held that "the contention of the appellant as to

'resident person' it is specifically held that the alleged ground is based in the suppression of facts and may be treated accordingly". Further stating that the proceedings failed on techno legal ground and not on merits.

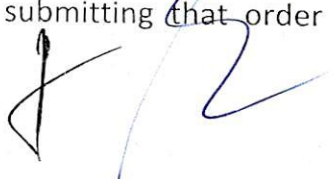
With directives to the officer having jurisdiction to proceed against the appellant as deem appropriate without being influence by the findings.

4. During the course of hearing on 22.02.2018 the learned advocate of the appellant submitted that the assessing officer who issued the show cause notice was not competent to do so and this fact was accepted by the Commissioner (Appeals) 'that order in original has been issued by an AC having no jurisdiction'. Further the advocate drew attention to paragraph 9 page 5 of the order in appeal, he submitted that finding be given by the Tribunal on the said issue and argued that there is no office or place of business in Sindh and stated that economic activity was carried in Sindh installing grid system and transmission. Adding that the appellant is a sub-contractor of contractor of NTDC and WAPDA. He argued that the Commissioner (Appeals) had taken the address from the official website www.aht.com.pk even, as per this site there is no office or place of business in Sindh and only a site camp which was presumed to be an office at Sindh. The learned advocate submitted that the site camp is only for the purpose of liason with the workers and the head office and it is not a place of business under SSToS Act, 2011. Under SSToS Act, 2011 if a non-resident gives services to a resident the liability to pay the tax rests with the service recipients. The website was not confronted and was shown for the first time in order of appeal. There is difference in place of business and economic activity. The observation of Commissioner (Appeals) that the appellant is a resident of Province of Sindh may kindly be declared as "Null & Void".

5. The respondent represented by Mr. Shoiab Iqbal Rajkoti Assistant Commissioner submitted that fresh SCN has already been issued by the respondent / department on ground that previous show cause notice was issued by an officer having no jurisdiction. The order in original No.409 of 2016 dated 28.05.2016 is not in field.

We have heard the oral submissions made by the learned representatives of both the sides. The learned Commissioner (Appeals) has stated that the show cause notice and order in original are without jurisdiction, hence set aside the order in original on techno-legal ground and not on merits. Furthermore, the Assistant Commissioner representing the department submitted that previous show cause notice was issued by an officer having no jurisdiction, the order in original No.409 of 2016 dated 28.05.2016 is not in field and a fresh show cause notice has already been issued by the respondent department to the appellant.

In view of the above discussion the order of Commissioner (Appeals) having set aside the order in original and respondent submitting that order in original No.409/2016



dated 28.05.2016 is not in field and fresh show cause notice have been issued. Any further discussion was not required after having set aside the order in original by the Commissioner (Appeals) in the present appeal case, as there remains no cause of action.

The appeal is disposed of in the above terms.



(Muhammad Ashfaq Balouch)
JUDICIAL MEMBER



(Razia Sultana Taher) 26/02/18
TECHNICAL MEMBER

Karachi

Dated:26.02.2018

Copies supplied for compliance:-

1. The Appellant through authorized Representative.
 2. The Assistant Commissioner (Unit-), SRB, Karachi.
- Copy for information to :-
- 3) The Commissioner (Appeals), SRB, Karachi.
 - 4) The Deputy Commissioner (Legal), SRB, Karachi.
 - 5) Office Copy.
 - ✓ 6) Guard File.

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