

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT-02/2018

M/s Ensemble Pakistan (Pvt.) Limited.....Appellant

**Versus**

Deputy Commissioner (Unit-15), SRB, Karachi.....Respondent

Mr. Imran Hyder Advocate for Appellant

Mr. Rashid Ali.AC, SRB, Karachi for Respondent

Date of hearing 19.03.2018

Date of Order 19.03.2018

ORDER

**Justice<sup>®</sup> Nadeem Azhar Siddiqi, Chairman:** This appeal has been filed by the appellant challenging the Order passed by the Commissioner (Appeals) in Appeal NO. 56/2017 vacating the stay granted to the appellant under section 58 (4) of the Sindh Sales Tax on Services Act, 2011 filed by the appellant against the Order in Original No. 06/2017 dated 13.04.2017 passed by the Deputy Commissioner (Ms. Abdul Rauf) SRB, Karachi.

The facts of the case as mentioned in the Order-in-Original are that the Appellant is registered with SRB in the service category of "Business Support Service", tariff heading 9805.9200 of the Second Schedule of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act).

2. The allegation against the appellant is that from scrutiny of Financial Statement for the year 2014 and 2015 provided by the appellant transpires that appellant has earned revenue of Rs.42,399,790/= during these two years involving Sindh sales tax of Rs.6,506,457/=, which the appellant is liable to deposit as prescribed.

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3. That a show-cause notice dated 04.08.2016 was issued to the appellant to show-cause as to why tax liability of Rs.6,506,475/= may not be assessed and recovered along with default surcharge and penalties. The appellant filed written reply dated 07.03.2017 and relied upon its earlier reply dated 10.08.2016 and 17.11.2016. The defence of the appellant was that services rendered by the appellant are not specifically mentioned in the Second Schedule of the Act. It was further stated that the appellant has rendered services in Sindh for Rs. 3,240,422/=. The appellant also provided the details of services provided outside Sindh.
4. The Assessing Officer passed assessment order in the sum of Rs.6,506,457/= along with default surcharge (to be calculated at the time of payment) and penalty of Rs.325,322/= under serial No.3 of section 43 of the Act.
5. The said order of the Assessing Officer was challenged by appellant by way of filing appeal before the Commissioner (Appeals). Initially the Commissioner (Appeals) granted stay in favour of appellant, however the same was vacated under section 58 (4) of the Act on expiry of 60 days. Hence this appeal.
6. On filing of this appeal stay was granted in favour of the appellant and the Commissioner (Appeals) was directed to expeditiously dispose of the appeal.
7. The Commissioner (Appeals) after hearing the appellant and the Department has passed Order Dated 08.03.2018 and dismissed the appeal.
8. Mr. Rashid Ali the learned AC placed on record the photo copy of the order dated 08.03.2018 and submitted that the purpose of filing of appeal has been achieved and the appeal may be dismissed.
9. Mr. Imran Hyder the learned advocate for the appellant confirmed that the order has been passed and he has received the copy of the order. He further submitted that the Commissioner (Appeals) has not decided the appeal on merits and confirmed the assessment order without any



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material available before him and request that this appeal may be decided after considering the merits of the case.

We have heard the learned representative of the parties and have perused the record made available before me.

10. This appeal has been filed challenging the order of Commissioner (Appeals) dated 18.01.2018 by which the stay was vacated under section 58 (4) of the Act. The said order was not passed considering the merits of the case. The appeal was filed to obtain stay of demand of tax. The Commissioner (Appeals) has now passed order dated 08.03.2018 by which the appeal pending before him was dismissed. The purpose of filing of appeal has been achieved. The merits of the order in original and order in appeal cannot be considered in this appeal. The appellant has the remedy to challenge the order in appeal passed by Commissioner (Appeals) by filing appeal before the Tribunal.

11. In view of the above discussion the appeal is disposed of having borne the fruit. The copy of the order may be supplied to the learned representative of the parties.

  
(Agha Kafeel Barik)  
TECHNICAL MEMBER

  
(Justice<sup>®</sup> Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi: Dated 19.03.2018

Certified to be True Copy

Copies supplied for compliance:-

1. The Appellant through authorized Representative.
2. The Assistant Commissioner (Unit- ), SRB, Karachi.

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Copy for information to:-

3. The Commissioner (Appeals), SRB, Karachi
4. Office Copy.
- ✓ 5. Guard File.