

(Award file)

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

Appeal No. AT- 09/2018

M/s Central Testing Laboratory.....Appellant
606, 6th Floor, Clifton Center, Clifton
Karachi-75600

VERSUS

Assistant Commissioner, (Unit-18).....Respondent

Mr. Yasir Shah Barrister AT-Law
Mr. Mohsin Abbasi Advocate.....For Appellant

Ms. Rafia Uruj AC. SRB.....For Respondent

Date of hearing: 28-08-2018

Date of Order: 01-10-2018

ORDER

Mr. Muhammad Ashfaq Balouch:

Appeal against order in original (hereinafter referred to as OIO). No. 297/2016 was filed before the Learned Commissioner (Appeals), Sindh Revenue Board (hereinafter referred to as SRB) against on 04-06-2016.

As per report of the Learned Commissioner (Appeals) S.R.B. as aforementioned appeal could not be decided even after expiry of 643 days. Out of 643 days, 455 days adjournments were obtained by appellant. As per section 59(5) of Sindh Sales Tax on Services Act 2011 (hereinafter referred to as SST Act 2011) prescribed period of 180 days was expired on 08-05-2017. Keeping in view section 59(8) read with section 59(7) SST Act 2011, instant appeal was transferred to this Tribunal. Further the Learned Commissioner (Appeals) in Para(c) of this report stated that the Advocate appearing in this matter had not been able to produce documents that Department of Central Testing Laboratories was dissolved.

Brief facts as disclosed in the OIO are that M/s Central Testing Laboratories were reported to be engaged in providing or rendering services of "Service Provided or Rendered by the laboratories" classified under tariff heading 9817.9000 of the Second

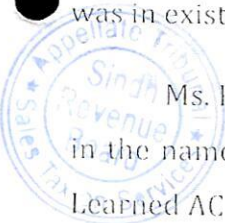
Schedule to the SST Act 2011 and service provided by the laboratories were taxable under section 3 at the rate of Rs. 14% of the service value, with affect from 1st-July-2015. As the said laboratories failed to voluntarily get registration with the SRB. Therefore M/s Central Testing Laboratories were served with notice dated 1st-January-2016, followed by another show cause notice (hereinafter referred to as SCN) issued on 7th March-2016. On 11th-04-2014 Deputy Director Law and Assistant Director Law of Pakistan Standard Quality Control Authority (PSQCA) appeared and claimed that being subsidiary to Ministry of Science and Technology, Government of Pakistan exempted from tax liability. Thereafter, Learned Assistant Commissioner (unit 18) compulsorily registered M/s Central Testing Laboratories, under section 24B of SST Act 2011, under the service category of "Services provided or rendered by the Laboratories" tariff heading 9817.9000 of Second Schedule of SST Act 2011, further penalty of Rs. 100000 was imposed under clause 1 of table of section 43 of SST Act 2011, for non registration with SRB.

Mr. Yasir Shah Barrister for the appellant has argued that notice for compulsory registration was issued in the name of Central Testing Laboratory, thereafter OIO was also passed against the same authority. Learned Counsel further added that the Central Testing Laboratory was dissolved by the Government of Pakistan vide Pakistan Standards and Quality Control Authority Act No VI of 1996. Section 37 of the said Act shows that Department of Central Testing Laboratory and Pakistan standard Institution was dissolved on 17-3-1996 at the time of assessments no institution namely Central Testing Laboratory was in existence. Therefore, registration of non existing Institution was not necessary.

Ms. Rafia Urooj has argued that all the declaration filed by the service recipient were in the name of Pakistan Standard Quality Control Authority, in support of her contention Learned AC brought on record two documents as annexure A and B respectively.

I have considered the arguments of both the parties and perused the record.

The dispute apparent from the record is the compulsory registration of Central Testing Laboratories. In this respect the claim of appellant is that the Central Testing Laboratories was dissolved by the Government of Pakistan vide "Pakistan Standards and



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Quality Control Authority Act No.VI of 1996, which was published in the gazette of Pakistan, extra 17 March 1996.

On the other hand the contention of the department was that service recipients in their monthly Sales Tax Returns for the Withholding agents have claimed that taxable services were provided by the appellant. Further claim of department was that appellant did not get registration in spite of providing taxable services.

The main issue which requires consideration is that whether Central Testing Laboratories after promulgation of Act was under legal obligation to get registration with SRB.

To proceed further it would be beneficial to reproduce the relevant parts of section of SST Act 2011 regarding registration and compulsory registration.

Section 24 registration.-(1) Registration will be required for all persons who:--

(a)-----

(b): Provide any of the services listed in the second schedule from their registered office or place of business in Sindh; and

(c)-----

(2)-----

(3) A person who receives a service, which is a taxable service by virtue of sub section(2) of section 3, and is not a registered person shall be deemed to be a registered person for the purpose of the tax period in which such person:-

(i)-----

(ii)----

(iii)----

(4)-----

(5)-----

(6)-----

Section 24B. Compulsory Registration.----[(1) if an officer of the SRB is satisfied that a person is required to be registered under this Act and that the person has not applied for registration, the officer of the SRB shall, after such inquiry as he may deemed fit,

registered the person through an order to be issued in writing and such person shall be deemed to have registered from the date he became liable to registration.]

(2) No person may be registered compulsory without being giving an advance notice and an opportunity of being heard.”

From the perusal of section 24.B it appears that a person who provides any of the services listed in second schedule from their registered office and place of business in Sindh. As per section 24.3 a person who receives a service which is taxable service by virtue of sub section 2 of section 3.

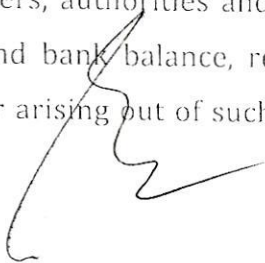
As per section 24.A (a) the person is making, or will provide services that are taxable services may apply for voluntarily registration.

While section 24B of SST Act 2011 says that if any person who was required to be registered under this act and that person has not applied for registration then the Officer of SRB compulsory registered that person.

Here in the present case Learned Counsel defending M/s Central Testing Laboratory has categorically stated that department of Central Testing Laboratory and Pakistan standard institution was dissolved by the Government of Pakistan vide Pakistani Standards and Quality Control Authority Act No. VI/1996, Islamabad dated 17th-March-1996. In support of his contention Learned Counsel appearing on behalf of appellant brought on record copy of Pakistan Standards Quality Control Authority Act No.VI 1996. The relevant portion of said Act is reproduced is here as a under.

37. Dissolution of the Department of Central Testing Laboratories and the Pakistan Standard Institution:- upon the commencement of this Act, the department of Central Testing Laboratories and the Pakistan Standard Institution, (hereinafter referred to as the said organizations), shell stand dissolved and -----

I. All assets, rights, powers, authorities and privileges and all properties, movable and immovable, cash and bank balance, reserve funds, investment and all other interest and rights in, or arising out of such properties and all the debts, liabilities



and obligations of whatever kind of the said organizational subsisting immediately before their dissolution shall stand transferred to and vest in the authority;

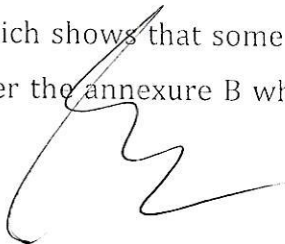
II. All officers and other employees of the said organizations shall, notwithstanding anything contained in any law or in any agreement, deed, documents of other instrument, stand absorbed and transferred to the Authorities after obtaining prior option from the employees of the said organizations and Shall deemed to have been appointed or engaged by the Authority in accordance with the terms and conditions which shall not be less favorable than in their previous organizations; and no officer or other employee whose services are so absorber and transferred shall be entitled to any compensation because of such absorption or transfer;

III. All debts and obligations incurred or contracts entered into or rights acquired and all matters and things engaged to be done by, with or for the said organizations before their dissolution shall deemed to have been incurred, entered into, acquired or engaged to be done by, or for, the authority; and

IV. All suits and other legal proceedings instituted by or against the said organizations before their dissolution shall be deemed to be suit and proceedings by or against the Authority and may be proceeded or otherwise dealt with accordingly.

As it is evident from the section 37 of the Pakistan Standard Quality Control Authority Act No.VI 1996 supra, that Central Testing Laboratory was dissolved on 17th - March-1996. After promulgation of said Act. And it is proved from said Act that at the time of issuance of show Cause Notice dated 7th-March-2016 for compulsory registration, the Central Testing Laboratory was already dissolved by the Government of Pakistan in year 1996, much prior to promulgation of SST Act 2011.

It is also worthwhile to mention here that department in support of their contention brought on record two documents and claimed that on the basis of these two documents the appellant was compulsory registered and penalty was imposed. But the perusal of both viz documents annexure A, which shows that some services were provided by Ministry of Science and Technology, further the annexure B which is list of monthly sales tax returns



for withholding agent Sindh sales tax special procedure withholding, rules 2011 (SSTW-03) it also shows that some services were provided by Director SDC PSQCA (Pakistan Standard Quality Control Authority) Karachi.

Both these documents do not reflect that during year 20. Any taxable service was provided by "Central Testing Laboratories."

In view above when Central Testing Laboratory was already dissolved by the Government of Pakistan vide Pakistan is Standard Quality Control Authority and at the relevant time no such authority was in existence, it is also worth mentioning that department has not been able to brought on record any authentic documents that Central Testing Laboratory was in existence and provided any taxable services during this Tax period and liable for registration.

In light of above discussion the Appeal is here by allowed and Order in Original No. 297/2016 dated 30th-April-2016 passed by Learned Assistant Commissioner (unit-18) SRB is hereby set-aside.



Mr. 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, Karachi.
5. Office copy
6. Guard file.



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