

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT 13/2018

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, and Mr. Zuhaib Awan, AC-SRB, Karachi for Respondent

Date of Filing of Appeal: 22.03.2018

Date of hearing: 08.10.2018

Date of Order: 12.10.2018

ORDER

**Justice<sup>®</sup> Nadeem Azhar Siddiqi:** This appeal has been filed by the appellant challenging the Order-in-Appeal No.42/2018 dated 08.03.2018 passed by the Commissioner (Appeals) in Appeal NO. 56/2017 filed by the appellant against Order in Original No. 06/2017 dated 13.04.2017 passed by the Deputy Commissioner (Mr. Abdul Rauf) SRB, Karachi.

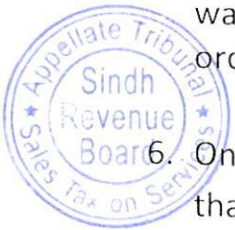
1. The facts of the case as mentioned in the Order-in-Original are that the Appellant is registered with SRB in the service category of "Business Support Service", tariff heading 9805.9200 of the Second Schedule of



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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.
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), who upheld the order in original toto and dismissed the appeal, hence this appeal.
6. On 29.03.2018 Mr. Imran Hyder Advocate for the appellant submitted that the Assessment Order is erroneous and faulty and cannot be maintained and the Commissioner (Appeals) despite receiving credit advices of foreign remittance and bank statement failed to consider the same. He then submitted that both the orders are not sustainable in law and the malafide of the department is apparent on the record. He then submitted that the Assessing Officer fell in error in assessing the value of service only on the basis of Financial Statements without any

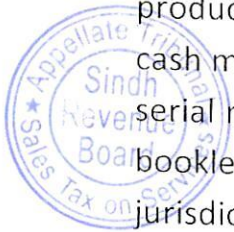


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independent exercise to determine the value of services in accordance with law and the Commissioner (Appeals) has erroneously endorsed the said erroneous and faulty assessment order.

7. On 10.05 2018 Mr. Rashid Ali, AC submitted that appellant claims that it has provided services within Sindh, Islamabad, Lahore and Dubai and is only liable to pay Sindh Sales Tax on the services provided in Sindh, but the appellant has failed to provide any evidence and necessary documents to bifurcate the services provided by the appellant.
8. Mr. Imran Hyder submitted that the appellant was neither registered with SRB nor any other tax authorities in Pakistan and is liable to pay Sindh Sales Tax on services from the date of registration i.e.23.11.2015. Mr. Imran further submitted that he will submit all invoices for the periods from July 2013 to June 2015, Bank verified credit Advices along with Bank Statement, Rent Agreements.
9. Mr. Rashid Ali submitted that that for the purpose of foreign exchange remittance the party is required to submit "Form V14" to its banker in terms of Rule 12 of the Foreign Exchange Regulations issued by State Bank of Pakistan.
10. On 07.08.2018 Mr. Zuhaib Awan, AC filed comments/reconciliation in compliance of earlier order. Mr. Zuhaib submitted that the appellant produced seven counter sales booklets contained duplicate copies of cash memos. Mr. Zohaib submitted that out of seven, four booklets have serial numbers and 3 (three) are without serial numbers and from those booklets it is not possible to bifurcate receipts from Sind and other jurisdiction. He then submitted that no ledger has been provided, instead working sheets were provided without supporting invoices. The learned AC has worked out the tax to Rs.2,760,936/-. The learned AC submitted that the foreign remittance has been excluded from the calculation of tax. He then submitted that the appellant claims a sum of Rs.11,091,650/- on account of receipts from space rentals but failed to



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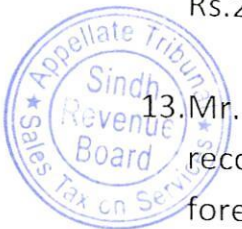
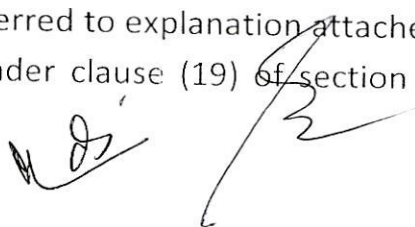
produce necessary documents to show from which jurisdiction the said amount was received.

11. Mr. Imran Hyder in reply submitted an amount of Rs.11,091,650/- was shown under the head of space rentals and that amount was in respect of receipts from abroad. He then submitted that this amount was received through credit cards. After hearing the parties at length the appellant was directed to produce all relevant documents to prove that the amount of Rs.11,091,650/- was received from abroad through credit cards. The appellant was also required to place on record necessary documents to show receipts from other jurisdiction.

12. On 17.09.2018 Mr. Zuhaib Awan submitted that initially the then Assessing Officer Mr. Abdul Rauf had passed Assessment order on the basis of total receipts (revenue) shown in the financial statements for the tax periods 2013-2014 and 2014-15, which comes to Rs.42,399,790/- involving sales tax of Rs.6,506,457/-. He then submitted that Assessment order was confirmed in appeal, and under the direction of the Tribunal, a fresh reconciliation report was filed on 07.08.2018 on the basis of documents and details provided by the appellant and the tax was worked out to Rs.2,760,936/- for the above two tax periods. Again on the direction of the Tribunal another reconciliation report dated 17.09.2018 was filed, according to which the tax worked out to Rs.2,125,998/-.

13. Mr. Imran Hyder Advocate for appellant was not satisfied with the fresh reconciliation and submitted that the tax has been wrongly charged on foreign earnings of Rs.11,091,650/- and space rental of Rs.651,056/- and Rs.1,086,976/- as the service of rent/rental was brought to tax net effective from 1<sup>st</sup> July, 2015. Regarding Rs.11,091,650/- the learned Advocate submitted that the same are foreign remittance and is not taxable.

14. Mr. Zuhaib has referred to explanation attached to definition of business support service under clause (19) of section 2 of the Act of 2011 and



submitted that the infrastructure support service includes providing office along with utilities.

15. On 08.10.2018 Mr. Zuhaib Awan files reconciliation according to which tax liability for the tax periods from July 2013 to June 2015 comes to Rs.1,875,995/- and the appellant is liable to deposit the balance tax as worked out on the basis of revenue shown in the audited financial accounts. This amount includes the tax on foreign remittance also.

16. Mr. Imran Hyder in reply submitted that out of the foreign income of Rs.11,091,650/- an amount of Rs.41 lacs is receivable upon which the tax is not payable unless the amount is received by the appellant. He then submitted that Tariff heading 9806.3000 for Rental Income was brought to tax net effective from July 2015 and no tax on that services was payable in the tax periods involved in this case.

17. Mr. Zuhaib Awan submitted that the tax was charged under the tariff heading 9805.9200 (Business Support Services) and referred to sub-section (19) of Section 2 of the Act and submitted that providing space for display and sale promotion also comes within the ambit of business support service.

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

18. According to the appellant it is providing services in Sindh, Punjab, Islamabad and Dubai and London. The Assessing Officer on the basis of entries available in the financial statements for the years 2014 and 2015 passed assessment order in the sum of Rs.6,506,457/= along with default surcharge and penalty of Rs.325,322/=. The Assessing Officer failed to consider the defence of the appellant that the services rendered by it are not specifically mentioned in the Second Schedule of the Act and that it has rendered services in Sindh for Rs. 3,240,422/=. The appellant also provided the details of services provided outside Sindh. The Assessment Order solely based on the entries in the financial statement is not correct and proper without linking the said entries with the providing or rendering services.



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19. The Commissioner (Appeals) upheld the assessment order for the reason that appellant for want of documents has failed to prove the services provided outside Sindh and the foreign remittance. However in para 09 of his order the Commissioner (Appeals) has acknowledged that ".....The Agreement/arrangements, invoices and record of the transactions could prove the case of the appellant, which have not been provided for one pretext or the other. The Appellant provided record of foreign remittance to some extent, invoices pertaining to courier services and bank statement. But these documents are not sufficient to prove as such". The learned Commissioner (Appeals) despite holding that "provided record of foreign remittance" has failed to provide relief to the appellant to the extent it has proved the foreign remittance and has erroneously upheld the order in toto. The appeal before the Commissioner (Appeals) kept pending for reconciliation, but from the order it appears that either the reconciliation was not finalized/prepared or the same has not been considered by the learned Commissioner (Appeals).

20. Before the Tribunal Mr. Rashid Ali the learned AC submitted Comments dated 10.05.2018. From the comments it appears that the appellant submitted documents to bifurcate the services provided in Sindh and other areas and the documents to show receipt of foreign remittance.

21. Mr. Zuhaib Awan the learned AC filed Comments/Report dated 07.08.2018 and on the basis of documents produced by the appellant and worked out the tax of Rs.2,760,936/=.

22. Mr. Zuhaib Awan again filed New Reconciliation Report dated 17.09.2018 according to which the tax worked out was Rs.2,125,998/= . The AC has treated the entire foreign remittance of Rs.11,091,650/= as taxable and worked out sales tax of Rs.1,663,748/= . The reason for taxing the foreign remittance as stated by the AC in his report is "Thus the appellant could not provide the foreign remittance against the amount of Rs.11,091,650/= ". As per the record available before us this observation is not correct. In the earlier report dated 10.05.2018 in para 6 the then learned AC Mr. Rashid Ali has acknowledged that the appellant has provided foreign exchange details and bank statements. Mr. Rashid Ali also placed on record photo copy of letter dated 30.03.2018 under cover of which the appellant has provided the documents. In his order the Commissioner (Appeals) also acknowledged that ".....the appellant



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provided record of foreign remittance to some extent” .....It appears that Mr. Zuhaib Awan, AC to tax the foreign remittance has totally ignored those documents while preparing New Reconciliation Report Dated 17.09.2018.

23. The appellant got voluntarily registration on 23.11.2015 under Tariff Heading 9805.9200 (Business Support Service) of the Second Schedule of the Act. The plea of the appellant is that it is not liable to pay sales tax on space rentals is not correct. The defence of the appellant is that it runs outlets in Karachi, Lahore, Islamabad, Dubai and London and provides space to various designers to facilitate sale of their products (dresses) and received service charges. Providing space to designers is part of the business support services providing or rendering by the appellant. The explanation attached to sub-section (19) of section 2 of the Act provides “for the purpose of this clause, the expression “infrastructural support services” included providing office along with utilities, lounge, reception with personnel to handle messages, secretarial services, telecommunication facilities, pantry and security;”. From this explanation it is clear that providing space is not a separate or rental activity but is the part of business support service.

24. The other contention of the appellant is that it is only liable to pay Sindh sales tax on the services provided in Sindh is correct. Clause (a) of sub-section (1) of section 3 of the Act provides that “a taxable service is a service listed in the Second Schedule to this Act, which is provided by a registered person from his registered office or place of business in Sindh”. Secondly sub-section (3) of section 3 of the Act provides that “where a person has a registered office or place of business in Sindh and another outside Sindh, the registered office or place of business in Sindh and the outside Sindh shall be treated as separate legal persons”. The learned AC in New Reconciliation Report dated 17.09.2018 has accepted that the services were also provided outside Sindh and has excluded the services provided outside Sindh for the purpose of Sindh sales tax.

25. The other contention of the appellant is that foreign remittance is not taxable appears to be correct. The services provided outside Sindh is not taxable under Sindh Sales Tax on Services Act, 2011. If the foreign remittance is a result of providing and rendering services outside Pakistan/Sindh the same is not taxable. The dispute is whether the appellant has provided proper and relevant documents or not for



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proving the foreign remittance. To us the appellant at this stage has provided sufficient documents to show that it has received foreign remittance and the same is part of its earnings shown in the financial statement. The learned AC in his Comments filed on 10.05.2018 has acknowledged that details of foreign remittance and bank statements were filed by the appellant.

26. It is apparent that none of the Officers appeared before us has properly considered the details of foreign remittance and bank statements provided to them. To us the appellant is entitled to the relief to the extent of documents provided by it and the total amount cannot be taxed.

27. In view of the above we are satisfied that both the order in original and order in appeal are not proper as the same were based only on the entries available in the financial statements without any material available on record linking the said entries with the providing and rendering service. Consequently the appeal is partly allowed and both the orders are set aside to the extent of taxing the foreign remittance and the case is remanded to the Assessing Officer to properly determine the value of foreign remittance on the basis of documents provided by the appellant and any other additional documents to be provided by the appellant and the said determined amount be excluded for the purpose of levying Sindh sales tax.

28. The Assessing officer has taxed the services provided in Sindh the value of which comes to Rs.3,001,891/= involving sales tax of Rs.462,251/= out of which the appellant has deposited Rs.250,000/= during the pendency of appeal before the Commissioner (Appeals). The appellant is directed to deposit the balance tax within fifteen days from the date of receipt of this order failing which it will also be liable to pay default surcharge as provided under section 44 of the Act and penalty for non-payment of tax as provided under Serial No.2 of Table of section 43 of the Act.

29. Before parting with this order we want to point out the manner in which this case has been dealt with by the Officers of SRB. Firstly the show-cause notice was issued only on the basis of entries in the financial statement demanding Sindh sales tax of Rs.6,506,457/= which culminated to Rs.2,125,998/= including an amount of Rs.1,663,748/= on




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foreign remittance. The Assessing Officers have made a practice to pass assessment orders only on the basis of entries available in the financial statement which practice is neither legal nor proper. From the show-cause notice it is evident that except the financial statements nothing else is available before the Assessing Officer to link the entries in the financial statement to providing or rendering services. The department should avoid issuing show-cause notice without any details available with it. In several judgments the superior courts have declared that fishing and roving enquiry is not permissible. To us issuing show-cause notice without material available before the Assessing Officer amounts to harassment and this should be avoided.

30. The appeal is disposed of. The copy of the order may be supplied to the learned representative of the parties.

  
(Agha Kafeel Barik)  
TECHNICAL MEMBER

  
(Justice Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi: Dated 12.10.2018

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.