

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT-22/2018

M/s B 2 B Logistics (Pvt.) Limited.....Appellant

**Versus**

Assistant SRB, Karachi.....Respondent

Mr. Fahad Farooqi, LLB for Appellant

Mr. Sharif Malik, AC, SRB, for Respondent

Date of hearing 06.07.2018

Date of Order 06.07.2018

ORDER

**Justice<sup>®</sup> Nadeem Azhar Siddiqi, Chairman:** This appeal has been filed by the appellant challenging the Order-in-Appeal No.57/2018 dated 23.04.2018 passed by the Commissioner (Appeals) in Appeal No. 42/2018 filed by the Appellant against the Order- in-Original No. 58/2018 dated 12.02.2018 passed by the Assistant Commissioner (Mr. Muhammad Yousuf Bukhari) SRB, Karachi.

01. The facts of the case as mentioned in the Order-in-Original are that the Appellant has got registration with SRB on 28.10.2014. It was further stated that from the annual audited accounts it is observed that the appellant has generated revenue of Rs.1,075,064,300/= during July, 2015 to June, 2016 and revenue of Rs.923,895,045/= from July, 2014 to June, 2015 by providing Business Support Service including warehousing, distribution and logistics falling under tariff heading 9805.9200 of the Second Schedule of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act).



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02. The allegation against the appellant in the order in original was that they have failed Null sales tax returns for the periods during October, 2014 to June, 2016. It was also alleged that from the annual audited accounts the appellant it is observed that appellant declared cost and expenses with the title rent, rates and taxes amounting to Rs. 47,232,277/= and Rs.19,270,064/= during the financial years July, 2015 to June, 2016 and similarly declared amount of Rs.28,012,603/= and Rs.13,476,015/= during the financial years July, 2015 to June, 2015. It was also alleged that renting of immovable property service is falling under tariff heading 9806.3000 and the appellant being a withholding agent was required to withhold Sindh Sales Tax of Rs.7,562,072/= on all renting services.

03. That a show-cause notice dated 15.08.2017 was issued to the appellant to explain as to why Rs.7,562,072/= (SST of Rs.3,976,986/= for the periods from July, 2014 to June, 2015 and SST of Rs.3,585,085/= for the periods July, 2015 to June, 2016) may not be assessed and recovered along with default surcharge and penalties.

04. The appellant filed written reply dated 07.12.2017. It was stated in the reply that the appellant is engaged in distribution of goods and transportation services. The revenue was from services of inter-city and intra-city transport and renting of warehouse throughout Pakistan which were wrongly perceived as Business Support Services. It was further stated that the appellant is engaged in distribution, sales and purchase of goods which is not subject to provincial sales tax.

05. The Assessing Officer passed assessment order along with default surcharge (to be calculated at the time of payment) and penalties.

06. The said order of the Assessing Officer was challenged by appellant by way of filing appeal before the Commissioner (Appeals). The Commissioner (Appeals) dismissed the appeal, hence this appeal.

07. The learned Representative for the Appellant at the very out set challenged that the Show Cause Notice dated 15.08.2017 was issued by

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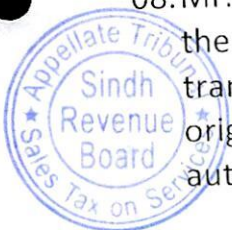
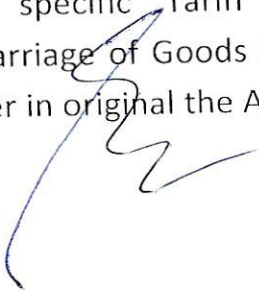


Assistant Commissioner SRB, Unit 30 who had no jurisdiction and authority to issue such notice and that order in original dated 12.02.2018 also suffered from the same defect. He referred to Notification No. SRB-3-4/20/2017 dated 10.07.2017 and Notification No. SRB-3-4/22/2017 dated 10.07.2017 and contended that at the time of issuance of show-cause notice the cases of Business Support Service fell within the jurisdiction of Unit No. 14 and at that time Mr. Rashid Ali, Assistant commissioner was Incharge of Unit No.14, whereas the show-cause notice was issued without lawful authority by Mr. Muhammad Yousuf Bukhari, Assistant commissioner, Unit No.30, Inter-city Transportation or carriage of goods by road or through pipe line or conduit. He then submitted that the position was same at the time of passing of the order in original and referred to Notification No. SRB-3-4/30/2017 dated 08.12.2017 and Notification No. SRB-3-4/32/2017 dated 08.12.2017 and contended that at the time of passing order in original the cases of Business Support Service falls within the jurisdiction of Unit No. 4 and at that time Mr. Rashid Ali, Assistant commissioner was Incharge of Unit No.4, whereas the order in original was passed by Mr. Muhammad Yousuf Bukhari, Assistant commissioner, Unit No.23, Inter-city Transportation or carriage of goods by road or through pipe line or conduit.

08. Mr. Sharif Malik in reply supported the orders and submitted that since the business support services includes the service of inter-city transportation the show cause notice was rightly issued and order in original was rightly passed by Mr. Yousuf Bukhari who at that time was authorized to deal with the case of inter-city transportation.

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

09. The show-cause notice dated 15.08.2017 was issued under the specific tariff heading 989805.9200 (Business Support Service). The appellant got registration under specific Tariff Heading 9836.0000 (Inter-City Transportation or Carriage of Goods by Road or through Pipe Line and Conduit). In the order in original the Assessing Officer for obvious reason



has avoided to mention the category under which the appellant has got registration.

10. Section 34 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) provides that for the purpose of this Act, the Board may, by notification in the Official Gazette, appoint any person in relation to any area, any case or class of cases specified in the notification to act as an officer of the Board. Section 35 of the Act provides that any officer of the SRB appointed under section 34 shall exercise such powers and discharges such duties as are conferred or imposed upon him under this act and rules made thereunder. Section 36 of Act provides that Board may, by notification in the official gazette and subject to such limitations or conditions as may be specified therein, empower by name or designation authorize the Officers of SRB to exercise powers. From the perusal of the above provisions of the Act it appears that the powers can be entrusted upon the officers of SRB by the Board by notification in the official gazette. The notification in exercise of powers under section 34 of the Act was issued by the Board on 10.07.2018 by which the powers and functions of officers of SRB were assigned to the officers (Assistant Commissioners) specified in the column (2) of the notification in respect of functions and description, specified in column (3) of the notification. The Unit No.14 was entrusted with the powers to deal with the cases of Business Support Services. The other notification of the same date was issued in exercise of powers under section 34, 35 and 36 of the Act and Mr. Rashid Ali, Assistant Commissioner was assigned to exercise jurisdiction relating to Unit 14 Business Support Services.



11. The Show Cause Notice dated 15.08.2017 was issued by Mr. Mr. Muhammad Yousuf Bukhari, Assistant Commissioner, Unit No. 30, Inter-City Transportation or Carriage of Goods by Road or through Pipeline or Conduit. From this it is apparent that Mr. Muhammad Yousuf Bukhari, Assistant Commissioner Unit No. 30 was not authorized by the Board to deal with the case of Business Support Services.

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12. Same is the position with the order in original dated 12.02.2018 passed by Mr. Muhammad Yousuf Bukhari, Assistant Commissioner Unit No. 23. At that time the Notifications dated 08.12.2018 were in field and according to those notifications Mr. Rashid Ali, Assistant Commissioner, Unit No. 4 was authorized to deal with the case of Business Support Service. Whereas Mr. Yousuf Bukhari Assistant Commissioner, Unit No.23 was authorized to deal with cases of Inter-City Transportation or Carriage of Goods by Road or through Pipeline or Conduit.

13. The exercise of jurisdiction under the Act is subject to issuance of notification in the official gazette by the Board without which the officers cannot exercise jurisdiction. The issuance of notification for the purpose of exercise of jurisdiction appears to be mandatory condition which cannot be waived or ignored.

14. In the reported case of Izhar Alam Faruqi Advocate versus Sheikh Abdul Sattar Lasi and others 2008 SCMR 240 it has been held that jurisdiction cannot be assumed with the consent of parties and notwithstanding the raising of such an objection by the parties, the forum taking cognizance of the matter must at the first instance decide the question of its jurisdiction. It was further held that There can be no exception to the principle that an order passed or an act done by a court or a tribunal not competent to entertain the proceedings is without jurisdiction and that it is mandatory for the court or tribunal as the case may be to attend the question of jurisdiction at the commencement of the proceedings because the jurisdictional defect is not removed by mere conclusion of trial or enquiry and objection to the jurisdiction can be raised at any subsequent stage. The Honorable Supreme Court has relied upon the reported case of Rashid Ahmad versus State PLD 1972 SC 271 in which it was held that if a mandatory condition for the exercise of a jurisdiction before a court, tribunal or authority is not fulfilled, then the entire proceedings which follow become illegal and suffer from want of jurisdiction. Any orders passed in continuation of these proceedings in appeal or revision equally suffer from illegality and are without jurisdiction.



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15. In the reported case of Ms. Aluminum processing Industrial International (Pvt) Ltd. Versus Pakistan through Chairman Central Board of Revenue 2011 PTD 2128 the Honorable High Court of Sindh had held that the authority dealing with a matter must possess the jurisdiction to deal with the same and if such authority does not have the power the initiation of proceedings are liable to be quashed being coram-non-judice and non-est in the eyes of the law.
16. We are satisfied that the show-cause notice was issued without lawful authority and all proceedings initiated or undertaken in consequence thereof including the order in original and order in appeal are also without lawful authority. The appeal is allowed and in consequence thereof the order-in-original and order-in-appeal are set-aside. The department is at liberty to issue fresh show-cause notice to the appellant.
17. As far as the other points raised by the learned representative of the parties regarding applicability of Tariff Heading Business Support Service (9805.9200) and chargeability of Sindh Sales tax on the economic activities of the appellant are concerned it is expected that the concerned officer will examine the issue before issuing the fresh show-cause notice.
18. In view of the above, discussion on the other points raised by the learned representative of appellant are not necessary.
19. The appeal is disposed of in above terms. Copy of the order may be supplied to the learned authorized representative of the parties.

  
(Agha Kafeel Barik)  
Member Technical

  
(Justice (R) Nadeem Azhar Siddiqi)  
Chairman

Certified to be True Copy

  
**REGISTRAR**  
**APPELLATE TRIBUNAL**  
**SINDH REVENUE BOARD**

Karachi. Dated.06. 07.2018

Copies Supplied to:

- 1) The Appellant through Authorized Representative
- 2) The Assistant Commissioner, SRB for compliance  
Copy for Information
- 3) The Commissioner Appeals, SRB
- 4) Guard File
- ✓ 5) Office File