

BEFORE THE APPELATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

SB-I

APPEAL NO. AT-23/2018

M/s. Bachelors Button.....Appellant

Versus

Assistant Commissioner, SRB, Karachi.....Respondent

Date of hearing 05.07.2018

Date of Order 05.07.2018

Mr. Arshad Malik, Advocate for Appellant

Ms. Uzma Ghori, AC-SRB for Respondent.

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal No.40/2018 dated 08.03.2018 passed by the Commissioner (Appeals) in Appeal NO. 61/2017 confirming the Order in Original No. 107/2017 dated 02.05.2017 passed by the Assistant Commissioner, Unit 26 (Mr. Zohaib Awan), SRB, Karachi.

1. The facts of the case as mentioned in the Order-in-Original are that the Appellant is registered with SRB under service category of "Laundry and Dry Cleaners" (tariff heading 9811.0000) of the Second Schedule of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) which are taxable services.
2. It was alleged in the order in original that from the scrutiny of the income tax return 2015 (July-2014 to June-2015) of the appellant it reveals that it has earned revenue of Rs.4,799,000/=, however they have failed to deposit SST amount of Rs.719,850/=.



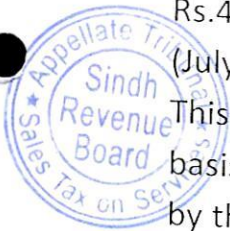
3. A show-cause notice dated 19.10.2016 was issued to the appellant to explain as to why the tax liability of short payment of SST should not be assessed and recovered from it along with penalties and default surcharge. The appellant failed to file reply hence, the Assessing Officer decided the case on the basis of available record and ordered the appellant to deposit the sales tax of Rs.719,850/= along with penalty and default surcharge.
4. The said order of the Assessing Officer was challenged by respondent by way of filing appeal before the Commissioner (Appeals), who dismissed the appeal, hence this appeal before this forum.
5. Mr. Arshad Malik learned Advocate for the appellant submitted that appellant has two outlets one at Quetta and other at Karachi and both outlets are separate legal persons as per sub-section (3) of section 3 of the Act. Mr. Arshad Malik in support of his arguments place on record the photocopies of the following documents'
- 1) Partnership deed registered at Quetta.
 - 2) Auditor report by Siddiqui & Co.
 - 3) Application for NTN
 - 4) NTN Certificate.
 - 5) Online order of Assessment for the year 2015
 - 6) Photocopy of Fard /Ownership of Shop at Quetta
 - 7) Photocopies of three Electric Bills of Quetta.
 - 8) Telephone Bill of Quetta. Copies of all photocopies supplied to other side.
6. Mr. Arshad Malik place on record a statement showing the receipts from Quetta and Karachi outlets and submitted that as per the Notification No. SRB 3-4/7/2013 dated 18th June, 2013 the monthly receipts from Karachi does not exceed 3.6 million and the payment of sales tax is exempted. (Notification is available at page 407 of 8th Edit 10). Copy supplied to Ms. Uzma Ghori.
7. Mr. Arshad Malik also submitted that the Commissioner (Appeals) has failed to properly consider Exemption Notification and wrongly held that there is no mention in the exemption that in case of 2nd branch in other jurisdiction the amount of turnover is to be separated. He submitted



M. Arshad Malik

that this finding is erroneous and against the provision of sub-section (3) of section 3 of the Act.

8. Mr. Arshad Malik Advocate submitted that despite the fact that no tax is payable by the appellant to avoid any further litigation the appellant is agree to pay 25% of the Tax determine by the assessing officer.
 9. Ms. Uzma Ghori files reconciliation. Copy supplied to other side.
 10. Ms. Uzma Ghori the learned AC supported both the order. She then submitted that the appellant has not produced necessary documents for the purpose of bifurcation of sales of Karachi and Quetta. She, however, submitted that from the photocopies of documents and invoices produced by the learned Advocate for appellant to day it appears that the appellant has two shops, one at Karachi and one at Quetta but for want of proper documentation bifurcation of sale of two shops is difficult.
 11. Ms. Uzma Ghori keeping In view of the circumstances of the case agreed to accept the offer made by Mr. Arshad Malik Advocate for the appellant for payment of sales tax to the extent of 25% of the sales tax assessed by the Assessing Officer.
I have heard the learned representative of the parties and perused the record made available before me.
 12. The assessing officer has determine the value of service to Rs.4,799,000/= as reflected in the income tax return for the year 2015 (July-2014 to June-2015) and determine the sales tax of Rs.719,850/=.
- This practice to determine the value of service e and tax only on the basis of income tax return is not proper. From the documents produced by the appellant it is apparent that the appellant has two out lets, one at Quetta and other is at Karachi. In terms of sub-section (3) of section 3 of the Act both outlets are separate legal persons and Sindh Sales tax can only be levied on the receipts of Karachi outlet.
13. Notification No. SRB-3-4/7/2013 dated 18.06.2013 provides that the services provided by laundries and dry cleaners are exempt from the payment of tax if do not fall under the categories mentioned in the provision. The appellant turnover from Karachi outlet is below Rs.3.6 million and it is entitled to claim the benefit of the exemption notification.

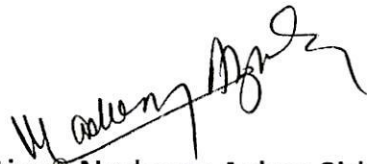


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14. The Commissioner (Appeals) has wrongly interpreted the Exemption Notification and wrongly held that there is no mention in the exemption notification that in case of 2nd branch in other jurisdiction the amount of turnover is to be separated. The Commissioner (Appeals) has failed to appreciate that the Sindh Sales Tax is not applicable on the receipts received from Quetta outlet and the exemption notification is to be applied only on the receipts from Karachi outlet and not on the receipts of both outlets.
15. In view of the above the offer made by the appellant for payment of the 25% of the tax amount determined by the Assessing officer is accepted. The 25% of the tax amount comes to Rs. 179,962/- out of which an amount of Rs. 95,349/- was adjusted by way of attachment of Bank Account of the appellant leaving a balance of Rs. 84,613/-.
16. Mr. Arshad Malik states that the balance Sales Tax of Rs. 84,613/- will be deposited with SRB within fifteen days from today. In case the amount of balance sales tax of Rs. 84,613/- is not deposited within 15 days from today the appellant is also liable to pay default surcharge from the date of order-in-original till payment of tax and penalty as provided under Table (3) of section 43 of the Act of 2011.

The appeal is disposed of in the above terms. Copy of order be supplied to the learned representatives of the parties.


(Justice Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi: Dated: 05.07.2018

Copies supplied to:-

1. The Appellant through Authorized Representative.
2. The Assistant Commissioner, SRB, Karachi.

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office copy
- 5) Guard file.

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD