

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT- 25 /2018

M/s Depilex (Pvt.) Ltd.....Appellant

Versus

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

Mr. Imtiaz Zuberi, Advocate for Appellant

Ms. Rafia Urooj, AC - SRB for Respondent

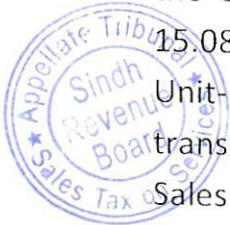
Date of Transfer from Commissioner (Appeals): 10.05.2018

Date of hearing 17.09.2018

Date of Order 08.10.2018

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been initially filed by the appellant challenging the Order-in- Original No. 765/2016 dated 15.08.2016 passed by the Deputy Commissioner (Mr. Syed Rizwan Ali), Unit-19, SRB, Karachi before Commissioner (Appeals), SRB who has transferred the same to the Tribunal under section 59 (7) of the Sindh Sales Tax on Services Act, 2011 for deciding the same in accordance with law.



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01. The facts of the case as mentioned in the Order-in-Original are that the appellant is registered with SRB as service provider in the category/ Tariff Heading 9810.0000 (services provided or rendered for personal care by beauty parlors, beauty clinics, slimming clinics or centers and others) of the second Schedule of the Sindh Sales Tax on Service Act, 2011 (herein after referred as the Act), chargeable to Sindh sales tax @ 10% effective from 1st July, 2013. .
02. It was alleged in the Order-in-Original that the audited financial statement for the tax period ended June, 2015 available with SRB shows that the appellant earned a total service revenue of Rs.108,444,590/= during the tax period July, 2013 to June, 2014 and July, 2014 to June 2015 involving Sindh sales tax of Rs.10,844,249/=. However the appellant only deposited sales tax of Rs.3,249,013/= leaving a balance of Rs.7,595,246/=.
03. That a show-cause notice dated 23.02.2016 was served upon the appellant to explain as to why tax liabilities of Rs.7,595,246/= may not be assessed and recovered under section 23 of the Act of 2011 along with default surcharge under section 44 of the Act and penalties under serial No. 3 of the Table of Section 43 of the Act.
04. The appellant filed its reply dated 22.03.2016 wherein it was stated that the appellant has its registered office at Lahore while business units providing services in Sindh are only branches. It was also stated that the appellant is registered with PRA. It was also stated that business units in both provinces issues separate sales receipts but are covered in one annual audited financial statement. The appellant declared that the sources of receipts are (1) Beauty Parlor (Beautification) service (2) Franchise Fees-Franchise arrangements managed through Head Office, Lahore, Punjab, (3) Institutional (educational) receipts.
05. The Assessing Officer after various hearings and detailed discussion has passed Order-in-Original determining the sales tax liability of



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Rs.3,229,565/= along with default surcharge and penalty of Rs.161,478/= serial No. 3 of the Section 43 of the Act.

06. The Appellant challenged the Order-in-Original by way of filing appeal before the Commissioner (Appeals) who instead of deciding the same has transferred the appeal to this Tribunal taking benefit of section 59 (7) of the Sindh Sales Tax on Services Act, 2011.

07. During pendency of appeal before Commissioner (Appeals) the learned AC filed Comments on 24.11.2017 and worked out the tax liability of Rs.1,789,865/=. During pendency of appeal before this Tribunal Reconciliation Report dated 29.05.2018 was filed by the learned AC and it was stated that SST on training services amounting to Rs.7,174,000/= and franchise services amounting to Rs.17,043,214/= has not been paid. (This working is against the order-in-original and the earlier Comments submitted on 24.11.2017). The learned AC filed Final Report on 06.08.2018 and stated that there is no dispute regarding deposit of sales tax on beautification services. Regarding Franchise services it was stated that only an amount of Rs.60,000/= was not reconciled and assessed tax of Rs.6,000/= on this account. The learned AC stated that value of alleged institutional/training services was worked out to Rs.7,174,000/= and treated the same as part of Beautification Services. Finally the learned AC filed a hand written Statement Dated 06.08.2018 and worked out tax on Institutional service to Rs.717,400/= and Franchise services to Rs.6,000/= making a total of Rs.723,400/=.



08. On 29.05.2018 Ms. Uzma Ghouri the learned AC and submitted that the dispute remains in respect of institutional services provided in Sindh the value of which is Rs.4,524,000/- for 2013-14 and Rs.2,650,000/- for 2014-15, and Franchise Services provided in Sindh the value of which is Rs.9,384,454/- for 2013-14 and Rs.7,658,760/- for 2014-15. She submitted that appellant has failed to satisfy the Assessing Officer regarding the franchise services. She also submitted that the alleged institutional service was wrongly claimed as exempt as no such exempt notification is in the field. She then submitted that counseling for

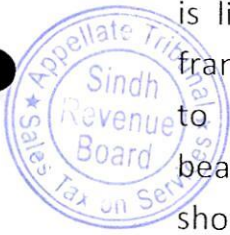
Uzma Ghouri

beautification is taxable in terms of definition of beauty parlor available in section 2(17) of the Act.

09. Mr. Imtiaz Zuberi the learned advocate for the appellant submitted that there is no tax on imparting/providing education and training and there is a difference between counseling and training. He then submitted that the head office of appellant is located at Lahore and all franchise services were provided from there and tax has been paid to PRA and the tax on franchise services provided in Sindh has been paid to SRB.

10. On 06.08.2018 he learned AC filed Financial Report as per order 29.05.2018. As per the report there is no dispute with regard to payment of tax on beautification services (9810.0000). Regarding the Franchise Services the learned AC states that the tax has been deposited except an amount of Rs.60,000/- claimed by the appellant related to Islamabad but neither agreement nor other supporting documents have been produced and therefore this amount of Rs.60,000/- is considered to be related to Sindh and tax payable comes to Rs.6,000/=. The learned AC submitted that appellant has failed to prove that any educational services have been provided in Sindh as the appellant has failed to prove the quantum of amount received from the students. She also submitted that in almost all agreements related to franchise services the appellant is liable to provide free of cost training to six staff members of the franchiser. She also submitted that the amount claimed by the appellant to the extent of Rs.7,174,000/- is actually the receipt from beautification. The learned AC also files a hand written statement which show that an amount of Rs.717,400/- on account of institutional receipt and an amount of Rs.6,000/- on account of franchise service are payable.

11. Mr. Imtiaz Zuberi submitted that no dues of tax is payable. He however agreed to deposit a tax of Rs.6,000/- on franchise services. Regarding institutional services the learned Advocate submitted that this service is not a listed service and no tax can be charged and the learned AC has wrongly included this service into beautification services. He then submitted that before the learned AC he had produced all relevant



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record to show that institutional/educational training services were provided and the AC in the assessment order has referred to same documents only and had ignored the invoices provided to him under cover of letter dated 06.05.2016, having round rubber stamp of SRB, which prima facie shows that invoices were produced before the AC but the same were not referred to in the order. Mr. Zuberi further submitted that in view of this letter the contention of the learned AC that the appellant has failed to prove the quantum of amount is not correct. (The copy of letter dated 06.05.2016 is placed on record). Mr. Zuberi also placed on record photocopies of two statements showing the amount received on account of institutional services out of which one bears the rubber stamp of SRB dated 27.04.2016.

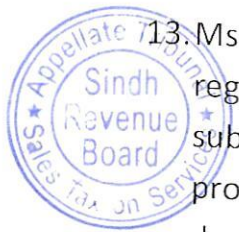
12. On 17.09.2018 Mr. Imtiaz Zuberi Advocate submitted that all relevant documents were provided to the then AC at the assessing stage and some documents were provided at the appellate stage and some documents were provided to learned AC through this Tribunal. He then submitted that tax on franchise services and beautification services were paid and the dispute is in respect of training/education provided by the appellant which is not taxable. He placed on record a photo copy of Income Tax Assessment order for the year 1995-96 in support of his claim that the appellant is providing education/ training services since beginning.

13. Ms. Rafia Urooj submitted that she has already filed final submission regarding institutional/training services and will adopt the same and submitted that appellant has failed to substantiate its claim that it is providing institutional/training service by producing relevant documents.

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

14. The dispute is in respect of franchise services and institutional/educational services provided by the appellant in Sindh.

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The tax worked out on franchise services is Rs.6,000/=, which the appellant agreed to deposit with SRB. The tax worked out on institutional/education service worked out to Rs. Rs.717,400/-. The AC disbelieving the appellant treated the institutional/educational services as beautification services and taxed the same. The contention of the AC that relevant documents have not been produced has no force. The Assessing Officer in para 11 of the order in original has clearly mentioned that the appellant provided copies of admissions forms belonging to students including CNICs for different beautification training and courses. (The AC in para 11 has also stated that the appellant has not provide any record/documents pertaining to franchise fee.) The Assessing Officer disbelieved the appellant solely on the ground that the appellant has not provide any record or document to show that the appellant is officially registered with any technical vocational training board or authority in Sindh and such training was given for educational purpose. The appellant has produced a letter dated 06.05.2016 containing the round seal of SRB under cover of which the sales tax invoices were produced before then then Deputy Commissioner, SRB. The appellant at appellate stage before Commissioner (Appeals) has also provided relevant documents i.e. Registration Certificate from Sindh Board of Technical Education of 1990, Certificates of Renewal of Affiliation dated 15.03.2016. Certificates issued by Sindh Board of Technical Education containing the name of appellant (Depilex Beauty Clinic & Institute, Karachi for Elementary Course of Beautification). The appellant also produced photocopy of Assessment Order for the year 1995-96 to show that it is running an Institute. All these documents show that the appellant is imparting training in the field of beautification.

15. The Assessing Officer in para 11 of the order in original stated that the appellant has broken up the revenue into three streams, viz, beautification services, franchise fee and institutional courses for their business units located at Lahore and Karachi. The Assessing Officer has failed to point out any fault on the part of the appellant in bifurcating the revenue in three parts out of which two are taxable and one is not

taxable. The Assessing Officer while taxing the revenue from imparting training has failed to advance any reason to disbelieve the version of the appellant.

16. The tax has been levied under Tariff Heading 9810.0000 (services provided or rendered for personal care by beauty parlors, beauty clinics, slimming clinics or centers and others) and not upon imparting training and education. If the appellant along with beautification services is also imparting training or education it is only liable to pay Sindh sales tax on services listed in the Second Schedule of the act and not on its other activities not part of Second Schedule. Admittedly no tax has been levied or imposed on training and education.

17. We are of the opinion that the appellant has placed sufficient material on record to show that it is imparting education/training against consideration and receipt on such account is not taxable.

18. 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.7,595,246/= which culminated to Rs.3,229,565/= in order in original. From the show-cause notice it is evident that except the financial statement nothing else is available before the Assessing Officer to link the entries in the financial statement to providing or rendering services. In final Reconciliation filed before this Tribunal the sales tax on the institutional/educational services (not taxable) the tax has been calculated to Rs.717,400/-. 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. Furthermore neither show-cause notice can be issued nor can order in original be passed only on the basis of entries available in the financial statement without linking the said entries with providing or rendering services. The best stage to resolve factual controversies is the First Appellate Forum {Commissioner (Appeals)}, but unfortunately the Commissioner



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(Appeals) instead of deciding the matter has taking advantage of section 59 (7) of the Sindh Sales Tax on Services Act, 2011 transferred the same to this Tribunal for decision and thus deprived both the parties to challenge his decision in appeal before the Appellate Tribunal, SRB. To us issuing show-cause notice without material available before the Assessing Officer amounts to harassment and this should be avoided.

19. The appellant has deposited a sum of Rs.6,000/= on account of sales tax on franchise services and produced CPRS for record.

20. In view of the above discussion the appeal is allowed. The order in original is set aside. The copy of this order be provided to the learned representatives of the parties.


(Agha Kafeel Barik)

TECHNICAL MEMBER

Karachi


Dated: 08.10.2018

Copies supplied for compliance:-

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

Copy for information to:-

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


(Justice[®] Nadeem Azhar Siddiqi)

CHAIRMAN

Certified to be True Copy


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SINDH REVENUE BOARD