

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT- 33 /2018

M/s Domeen Communications.....Appellant

Versus

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

Mr. Maqsood Hasan Khan, Manager of Appellant

Mr. Zohaib Awan, AC - SRB for Respondent

Date of Transfer from Commissioner (Appeals): 28.05.2018

Date of hearing 24.09.2018

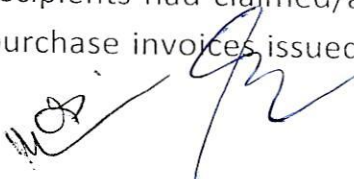
Date of Order 09.10.2018

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been initially filed by the appellant challenging the Order-in- Original No. 04/2017 dated 10.04.2017 passed by the Deputy Commissioner (Mr. Abdul Rauf), 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.

01. The facts of the case as mentioned in the Order-in-Original are that the appellant is engaged in the business of providing business support service, Tariff Heading 9805.9200 of the second Schedule of the Sindh Sales Tax on Service Act, 2011 (herein after referred as the Act), chargeable to Sindh sales tax.

02. It was alleged in the order-in-original that the scrutiny of the tax profile of different service recipients filed with SRB reveals that the said service recipients had claimed/adjusted input tax of Rs.7,070,838/= against the purchase invoices issued by the appellant during the period September,



2012 to January, 2017, but the appellant only declared sales tax/output tax of Rs.910,635/= instead of Rs.7,070,838/= declaring short paid tax of Rs.6,160,203/=. It was also alleged that the appellant also failed to file sales tax returns from November, 2016 to January, 2017.

03. That a show-cause notice dated 07.03.2017 was served upon the appellant to explain as to why tax liabilities of Rs.4,953,218/= may not be assessed and recovered under section 23 and 47 (1A) of the Act of 2011 along with default surcharge under section 44 of the Act and penalties under various provisions of the Table of Section 43 of the Act.

04. As per the order in original neither any reply was filed by the appellant nor did any one appear on the dates of hearing.

05. The Assessing Officer after various hearings and detail discussion has passed Order-in-Original determining the sales tax liability of Rs.6,160,203/= along with default surcharge and penalty of Rs.308,010/= under serial No. 3 of the Section 43 of the Act. The Assessing Officer also imposed penalty of Rs.79,998/= under serial No. 2 of the Section 43 of the Act and Rs.100,000/= under serial No. 15 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. On 04.07.2018 Mr. Maqsood Hasan, Manager of the appellant submitted that from time to time tax amounting to Rs.5,205,687/= was withheld and deposited which was not considered by the Assessing officer while passing the order in original. Perusal of file received from Commissioner (Appeals) shows that appellant on 25.05.2017 filed a letter along with photocopies of annexure which shows that from December, 2012 to April, 2017 sales tax has been deposited. From the tax profile of the appellant it also appears that an amount of Rs.4,981,020/= was shown in the column of withholding. The appellant



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before the Commissioner (Appeals) had also filed a statement showing an amount of Rs.4,961,020/= on account of withholding.

08. On 24.09.2018 Mr. Zohaib Awan, AC files re-conciliation report according to which after adjustment of withheld amount by the service recipients and its subsequent deposit with SRB the tax payable by the appellant comes to Rs.967,571/= along with penalties and default surcharge.

09. Mr. Maqsood Hasan Manager of the appellant agrees with the reconciliation report and submitted that the balance of sales tax as calculated by the learned AC will be deposited.

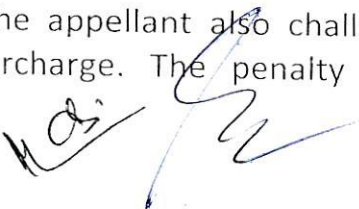
10. He also submitted that there was no malafides or deliberate ill intention in not withholding the balance amount of tax on the part of the appellant, the imposition of penalties and default surcharge are not justified.

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

12. The appellant was registered on 28.01.2026 under the category of Business Support Service, Tariff Heading 9805.9200 of the second Schedule of the Act, 2011. The claim of the appellant is that the service recipient have withheld 100% of tax and deposited it with SRB. The Tax Profile of the appellant shows that an amount of Rs.4,981,020/= was withheld and deposited. The assessment order was not proper as the same was passed without considering the withholding of tax and its deposit with SRB.

13. Mr. Maqsood Hasan, Manager of the appellant agrees with the reconciliation report and agreed to deposit the balance of sales tax of Rs.967,571/= as calculated by the learned AC and signed the diary sheet dated 24.09.2018 in token of acceptance of tax liability.

14. The appellant also challenged the imposition of penalty and default surcharge. The penalty and default surcharge cannot be imposed



without first establishing mensrea and malafides on the part of the appellant. In this case there is no independent determination at all in this regard and it was taken for granted by the forum below that the liability to pay default surcharge and penalty is a necessary consequence or corollary of non-payment of sales tax within stipulated period. In the reported case of Deputy Collector, Central Excise and Sales Tax, Lahore versus ICI Pakistan Limited, Lahore PTD 2006 1132 the Honorable Supreme Court has held that "In an appropriate case of default in payment of sales tax, a manufacturer or producer of goods could be burdened with additional sales tax under section 34 of the Act as well as penalty under section 33 of the Act. However, it does not necessarily follow that in every case such levy was automatic requiring no determination at all." In view of the above we are satisfied that the default surcharge and penalty was imposed without any just cause.

15. In view of the admission of the representative of the appellant appeal is partly allowed and the order in original is maintained to the extent of Rs.967,571/= only. The appellant is required to deposit the balance tax within fifteen days from the date of receipt of this order, failing which it is also required to pay the default surcharge.

16. The appeal is disposed of. The copy of this order be provided to the learned representatives of the parties.

(Agha Kafeel Barik)

TECHNICAL MEMBER

Karachi

Dated: 09.10.2018

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

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD