

(Guard file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

Appeal No.AT-49/2018

M/s Dairy Farm Appellant

VERSUS

Assistant Commissioner, SRB, Karachi Respondent

Mr. Nadeem Iqbal, Advocate For the Appellant

Mr. Rashid Ahmed Assistant Commissioner, SRB, Karachi ... For the Respondent

Date of hearing 15.08.2018

Date of Order 20.08.2018

ORDER

Mr. Agha Kafeel Barik: This appeal is filed against appellant order of Commissioner (Appeals) dated 19.06.2018 whereby he dismissed appeal for non-prosecution as the said person did not appear before Commissioner (Appeals) despite fixing of hearing of appeal for 24 times which was pending for 701 days for disposal. Earlier the Deputy Commissioner, SRB (Unit-22) had passed an order under Section 24B and 43(1) of the Act on 14.06.2018. He stated in the said order that since the said person had rented out his immovable property to "M/s Nazeer Dyeing and Bleaching" his receipts were taxable as it is a service listed in 2nd Schedule, under 9806.3000, read with Section 2(72C). As such he was liable to be registered under section 24B of the Act. The learned DC, SRB has given option that if he gets himself registered voluntarily before 25.06.2016 he would not be penalized under section 43(1). Apparently, the said person did not get himself registered under section 24, and was registered under section 24B and penalty of Rs.100,000/- was also imposed under section 43(1) as per order Order-in-Original dated 14.06.2018.

2. Mr. Nadeem Iqbal, Advocate the learned AR who contested the appeal argued that as per decision of the Honorable Sindh High Court renting of properties was not a taxable service.

He referred to the decision of Sindh High Court in C.P. No D-2421/2016 and others decided on 18.08.2017 whereby renting of immovable property was declared as not taxable.

3. Mr. Rashid Ahmed, AC-SRB who appeared for the Department, argued that after the amendment in Sindh Sales Tax on Services Act, 2011, vide Sindh Sales Tax on Services (amendment) Act, 2018 renting of property is now taxable retrospectively w.e.f.01.07.2015. The new provision of law which was assented on 04.04.2018 and gazetted on 11.04.2018 is reproduced under:

"1.(1) This Act may called the Sindh Sales Tax on Services (Amendment) Act, 2018.

(2) It shall come into force at once shall be deemed to have taken effect on and from 1st day of July, 2015.

2. In the Sindh Sales Tax on Services Act, 2011 hereinafter referred to as the Act in Section 4 in subsection (1) for Clause (b), the following shall be substituted:-

(b). An activity of supply or provision movable or immovable property by way of Lease, rent license or other similar arrangement; and".

3. In the said Act, in section 84, the full-stop at the end shall be replaced by a colon and thereafter the following proviso shall be added:-

"Provided that the levy and collection of sales tax on renting of immovable property services on any date on or after the First day of July, 2015 shall be deemed to be and shall always be deemed to have been validly levied and collected, notwithstanding anything contained in this Act or any law for the time being in force or any judgment, decree or order of any court".

4. Mr. Nadeem Iqbal the learned AR stated that the vires of this Act of legislature was again challenged in the Honorable High Court of Sindh in various C.Ps. However, he informed that he has not filed any C.P. in any of his case.



5. After hearing the arguments of both the sides I am of the considered opinion that by the amendment vide Gazette notification dated 11.04.2018 in Section 4(1) of the Sindh Sales Tax on Services Act, 2011 the lacuna of taxation on renting services of immovable property has been removed. Further the period from 01.07.2015 till notification date has been covered by giving it retrospective effect from 01.07.2015. All such action to impose SST since 01.07.2015 has been validated under Section 84 which also provides it coverage from any judgment, decree or order of any court.

6. In view of the above finding I confirm the order of AC-SRB on the issue of registration under section 24B. However, penalty in this case is to be imposed for non-compliance of voluntary registration at Rs.10,000/- and is ordered to be so. The order of penalty under section 43(1) is amended accordingly.

7. Appeal is disposed of as above.


(Agha Kafeel Barik)
TECHNICAL MEMBER

Karachi

Dated: 20.08.2018

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.


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