BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

Appeal no: 23/2019

Assistant Commissioner (Unit-23) SRB..... Appellant

VERSUS

M/s. Target Moving and Relocation... ..... Respondent

Mr. Muhammad Yousuf Bukhari A.C. S.R.B..... For Appellant

Mr. Kaleem Kazmi Advocate..... For Respondent

Date of hearing: 03-05-2019
Date of order: 16-05-2019

ORDER

Mr. Muhammad Ashfaq Balouch:

Present appeal has been filed by the above named appellant, challenging order in appeal No: **91/2017** (hereinafter referred to as OIA) passed by Commissioner (Appeals) SRB, whereby Order In Original No:190/2017 dated 30th June, 2017 (hereinafter referred to as OIO) ,passed by Mr. Muhammad Shareef Malik A.C unit-23 SRB Karachi was set-aside.

(2).Brief facts as disclosed in OIO are that appellant got voluntarily registration with SRB on 21-12-2015, under the service category of "Packers and Movers" under tariff heading (9819.1400) of the Second Schedule of the Sindh Sales Tax on the services Act 2011 (hereinafter referred to as the "**Act, 2011**"), Thereafter appellant started submitting monthly SST return with SRB. However it was latter observed that appellant had declared revenue of Rs, 5000/- with SRB during July 2015-

June 2016. On the verification of income tax return of the appellant transpired that revenue of Rs. 6091037/- during the period of July 2015 to June 2016 was declared. Appellant was confronted vide letter dated 15-03-2017. Appellant disclose that only sale of Rs. 5000/- was related to Sindh Taxable Services and the remaining amount was generated in Islamabad under jurisdiction of FBR. Department called for documents viz invoices of sales tax return submitted with FBR, however, appellant failed to submit the requisite documents. And requested to drop the proceeding for the reason that appellant was working within the jurisdiction of FBR. Assessing Officer was of the opinion that appellant had suppressed its revenue and had made short SST with SRB. Therefore, department issued show cause notice dated 13-05-2017 (herein after referred to as SCN) whereby appellant wad asked to explain why the SST liability of Rs. 852045/- for the period of July 2015 may not be assessed under section 23(1) of the Act, along with default surcharge and penalties under section 43 of that Act 2011. Appellant replied the notice vide letters dated 22-05-2017, 26-05-2017 and 15-06-2017. Appellant in these letters claimed that no taxable activity was performed in Sindh. Appellant also submitted breakup of revenue generated during the period from July 2015 to June 2016.

(3).After verification of the record Learned Assessing Officer observed that appellant has not declared sales of Rs. 3894962/- and failed to paid the Sindh Sales Tax of Rs. 840445/-. The Assessing Officer created demand of Rs. 840445/- further imposed penalty of RS. 100000/- under Serial no. 2 of the table under section 43 of the act, for violation

of section 30 of the act also imposed penalty of Rs. 42022/- under Serial No. 3 of the table under section 43 of Act for violation of section 9 and 17 of the Act.

(4).Appellant aggrieved from the order of Assessing Officer filed appeal before the Learned Commissioner (Appeals) SRB, who vide order dated 28-02-2019 allowed the appeal.

(5).Thereafter, present appeal was filed before this Tribunal by the department. The respondent filed parawise comments again retreated that services rendered by the respondent falls within the jurisdiction of Federal Board of Revenue, not within the Jurisdiction of Sindh Revenue Board. It was also stated that respondent rendered services for imports for rehabilitation operation in earth quake affected area of KP and FATA. Those services were exempt by the Government of Pakistan Ministry of Climate Change Natural Disaster Management Authority. Further it was claimed by the respondent that all required documents certificates were submitted by the respondent before the department.

(6). Mr. Kaleem Kazmi Advocate for the respondent has argued that only services of RS. 700/- pertaining to Sindh were provided by the respondent in Sindh, while remaining 99% services were rendered within jurisdiction of Islamabad. It was also argued that at the time of hearing of appeal before Commissioner Appeals. It was settled respondent will not claim refund of tax of Rs.7841/- and also will deposit further Rs. 1195/- said amount was also deposited by respondent with SRB. The services to M/s Crown Allogation and Momina Bandee was also rendered

form Islamabad. The services to Red Cross/crescent society were also rendered from Islamabad and these services were exempt and such exempt certificate was submitted. Respondent relied upon following authorities'

(i) 2001-PTD-1206, Commissioner Income Tax v/s Muhammad Hanif Faisala Jareer.

(ii) 2001-PTD-2416, Commissioner Income Tax B-Zone 3 Lahore v/s Hajji and Company Shiekhupura.

(iii) 2001-PTD-1492, Commissioner of Income Tax Faisalabad v/s Hajji Muhammad Ashraf.

(iv) 2003 PTD 1762 Punjab Beverage Company (PVT) ltd through general manager Faisalabad v/s Deputy Commissioner Faisalabad and two others.

(7). Mr. Muhammad Yousuf Bukhari A.C SRB for the appellant also argued that from the record appears that respondent has provided services form Karachi Port which is chargeable to tax under section 8 of the Act read with section 3 and tariff heading (9819.1400) of Second Schedule Sindh Sales Tax On Services Act 2011and these services not falls within the jurisdiction of FBR and no exemption of Sindh Sales Tax is available to the respondent. And no such as exemption was allowed by the Government of Sindh.

(8). I have considered the arguments of both the parties and perused the record the main contention of respondent was that at the time of hearing of appeals before the Learned Commissioner Appeals it was agreement between he parties that respondent in present case will

not claim the refund of amount of Rs.7841/- and will also deposit Rs.1195/-. To close this chapter present respondent agreed and deposited the said amount. In this respect respondent has invited my attention to Para 20 of the Order of Learned Commissioner (Appeals) which reads as under:-

> "During the hearing in appeal dated 30-05-2018, Mr. Syed Kaleem Kazmi (Advocate) and Mr. Zakirullah (Finance Manager) on behalf of the appellant and the Respondent appeared and both parties confirmed that after the reconciliation of invoices/record, the remaining liability due on the Appellant was Rs. 9030/-, out of which Rs, 7841/- had already been debited from the bank account of the Appellant on 29-08-2017 by the then Assessing Officer, SRB through bank recovery. That, the remaining amount of Rs, 1,197/- along with default surcharge was due to the appellant which the appellant agrees to pay within one week."

(9).From the perusal of aforementioned para 20 it appears that department after reconciliation of invoices of record created liability of Rs, 9038/- out of which Rs, 7841/- already recovered from bank account of respondent on 29-08-2017 by the Assessing Officer SRB through bank recovery and remaining amount of Rs, 1197/- along with the default surcharge was also agreed.

(10). Further from the above facts and circumstances it appears that there was agreed assessment between the department and

respondent in this respect the respondent has given consent not to claim the refund of Rs, 9038/- and further agreed to pay amount of Rs,1197/-. It is a settle law at the level of Apex Courts that agreed assessment was binding on both the Revenue as well as assesse. In this respect reliance placed upon following authorities:

1) 2001 PTD 1492 Lahore High Court Commissioner income tax Faisalabad v/s Hajji Muhammad Ashraf.

"Agreed assessment was binding both on the Revenue as well as the assesse—Far-fetched technicalities could not be resorted to interfere with agreed assessment—When the assesse had agreed to be assessed at a certain sum after he was found to have concealed his income, he owed a lot of explanation to be made before his appeal could be entertained by the Tribunal – Assesse had to make a case that the agreement was got executed in a manner which amounted to coercion, misrepresentation of fraud on the part of the Revenue and it was only on such three grounds or reasons that an agreed assessment could possibly be challenged before the First Appellate Authority or the Tribunal—Income Tax Appellate Tribunal, in circumstances, was not justified in annulling the assessment orders when there were made in agreement with the assesse and the assesse himself had offered for agreed assessment—Principles."

2) 2001 PTD 2416 Lahore High Court Commissioner income tax-I zone III, Lahore v/s Hajji & Co., Sheikhupura.

"agreed assessment-Scope—Essentials—Agreed assessment had to be taken as package deal and every term of the agreement clearly stated—If the terms of the agreement did not provide for initiation of penalty proceedings the Assessing Officer would not be permits to use the admission made by an assessed against him-Admittedly no amount of penalty was either settled at the time of settlement nor the assesse was properly informed of the contemplated proceedings—Tribunal was justified in maintaining the deletion of penalty imposed under S.111 of the Income Tax Ordinance, 1979 in circumstances."

3). 2003 PTD 1762 M/s Punjab Beverages Company (Pvt.) Ltd through General manager, Faisalabad v/s Deputy Commissioner of Income Tax, Faisalabad and 2 others.

"Assessments finalized under S.62 of Income Tax ordinance 1979 on agreement basis with "approval of the Commissioner-Re-opening of such agreed assessments on the basis of audit report as being erroneous and prejudicial to interest of Revenue—Validity—Assesse had submitted with returns audited accounts, balance-sheet, profit and loss account and depreciation chart etc. along with details of tax paid under S.53 of the ordinance, which were duly considered before agreeing to accept offer of assesse to be assessed at certain "income" –Such was a well-considered action on the part of revenue as well as assesse—Notices issued under S.66-A of the ordinance, had not alleged that assesse had either cheated or misguided department while entering into agreement—Revenue having accepted offer of assesse after due probe

had no business at all to describe such assessments as erroneous and prejudicial to its interest—Proposed action was completely uncalled for-High Court accepted Constitutional petition and declared impugned notices to have been issued without jurisdiction."

(11).Keeping in view above circumstances and facts and authorities of Honorable Superior Courts, when it is evident from the record that Commissioner (Appeals) passed the OIA on the bases of terms of agreement. It is settles law that agreed assessment cannot be altered thereafter. This bench has not found any irregularity and illegality in the order of Learned Commissioner (Appeals) supra. Therefore, the order passed by the Learned Commissioner (Appeals) is hereby is confirmed and departmental appeal is dismissed.

(Muhammad Ashfaq Balouch)
Judicial Member

Copies Supplied to:

1. The Appellant through Authorized Representative.
2. The Deputy Commissioner (Legal) SRB
3. The Assistant Commissioner, SRB for compliance
   Copy for information
4. The Commissioner Appeals, SRB
5. Guard File
6. Office Fill

Certified to be True Copy

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on 20/8/18

Registrar

Order Dispatched on 20/8/18

Registrar