

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

Appeal no: 28/2019

M/s Nazim Uddin Dahar and Sons.

Appellant/Applicant

VERSUS

Commissioner SRB, Sukkur region

Respondent

Mr. Shakeel Sheikh Rajput Advocate.....

For Appellant

Mr. Syed Athar Ali AC. S.R.B Sukkur.....

For Respondent

Date of hearing: 30-04-2019

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: 164/2016 dated 21-01-2019 (hereinafter referred to as OIA) passed by Commissioner (Appeals) SRB, whereby Order In Original No: 12/2016 dated 28th-04-2016 (hereinafter referred to as OIO), passed by Mr. Mohammad Shoiab Iqbal A.C (unit-33) SRB Sukkur, was confirmed.

(2). Brief facts as disclosed in the OIO are that appellant rendered taxable services, classified under tariff heading 9809.0000 of the Second Schedule of the Sindh Sales Tax on Services Act 2011 (hereinafter referred to as Act 2011) but failed to deposit with Sindh Revenue Board, Sales Tax On Services, worth Rs. 2416348/-. These services were provided to Execute Engineer, Begari Division Jacobabad. Show cause notice was issued to the appellant but appellant as per Assessing Officer neither replied the notice nor appeared before the concerned officer, therefore, ex-party order was passed, demand of Sindh Sales Tax on services Rs.2416348/- was created, further penalty of



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Rs.120817/- under serial number 3 of the Table of section 43 of Sindh Sales Tax on services was imposed, so also default surcharge was ordered.

(3). Appellant against the OIO No. 12/2016 dated 28-04-2016 filed appeal before the Learned Commissioner (Appeals II), who vide order in appeal No. 164/2016 dated 21-01-2019, dismissed the appeals from non-prosecution.

(4). Appellant aggrieved from OIA filed present appeal before this Tribunal.

(5). After admission of appeal notices were issued to department/respondent both the parties appeared.

(6). Mr. Mohammad Shakeel Rajput Advocate for the appellant has argued that the Learned Commissioner (Appeals) passed the ex-party order, without giving opportunity of hearing to the appellant. It was also argued that the exempt services were provided to the Gove; of Sindh, in this regard exemption certificate issued by the concerned department is also available with appellant. These services were declared exempt services vide notification No.SRB-3-4/3/2018 dated 06-02-2018.

(7). Mr. Syed Athar Ali AC SRB and Mr. Mohammad Shakeel Advocate prayed that matter may be remand back to Assessing Officer for decision, in light of notification of SRB mentioned supra.

(8). I have heard and considered the arguments of both the parties and perused the record.



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(9). It is evident from the orders of both the officers viz Learned Commissioner (Appeals II) and Assessing Officer that appellant provided taxable services of contractual. Execution of work on Furnishing supplies to Executive Engineer Begari Division, Jacobabad.

(10). As per appellant these services were exempted by the Gove: of Sindh vide notification No.SRB-3-4/3/2018 dated 06-02-2018. Appellant in support of this contention brought on record the photocopies of above mentioned exemption notification, so also the copy of exemption certificate issued by the concerned authority.

(11). It is also admitted position that ex-party order was passed by the Learned Commissioner (Appeals II) for the reason that appellant has failed to contest the matter before the Commissioner (Appeals) .therefore, plea of exemption was not consider by the Learned Commissioner Appeal and Assessing Officer.

(12). In view of above circumstances and by concert of both the parties, when as per appellant he has sufficient documents that exempt services have been provided to Government Of Sindh. Therefore, it would be in the interest of Justice to set aside the order of Learned Commissioner (Appeals II) and remanded back the matter to Learned Commissioner (Appeals II) to consider the appeal in light of notification SRB No-3-4/3/2018 dated 06-02-2018 and its limitation and conditions.

(13). Resultantly, order passed by the Learned Commissioner (Appeals II) is hereby set-aside and matter is remanded back to Commissioner (Appeals)



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with direction to consider the plea of appellant in light of Notification No. SRB-3-4/3/2018 dated 06-02-2018, its limitations and conditions and decided the matter within ninety days.


16-05-2019
(Muhammad Ashfaq Balouch)
Judicial Member

Copies Supplied to:

1. The Appellant through Authorized Representative. **Certified to be True Copy**
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


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on 20/5/19

Registrar

Order Dispatched on 20/5/19

Registrar