

( Court file )

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-31/2019

M/s Sangam Banquet ..... Appellant

**Versus**

Assistant Commissioner, SRB ..... Respondent

Mr. Nadeem Yaseen, Advocate ..... For Appellant

Ms. Nida Noor, Assistant Commissioner, Karachi ..... For Respondent

Date of hearing 29.04.2019

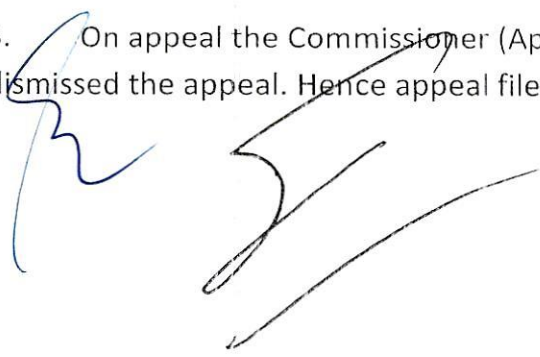
Date of Order 30.04.2019

ORDER

**Agha Kafeel Barik:** This is an appeal against order of Commissioner (Appeals) dated 22.01.2019 whereby he confirmed order in original dated 19.09.2018 of Assistant Commissioner (Unit-2), SRB, compulsorily registering the appellant under section 24B. The facts of the case are as under.

2. A physical survey by SRB revealed that the appellant is running a marriage banquet and is providing such services which are taxable under Section 8 read with tariff heading 9801.3000 but was neither paying any SST nor registered with SRB. Hence an informal notice dated 23.07.2018, followed by a show cause notice dated 01.08.2018 was issued to which the appellant, through its authorized representative, filed a written reply, after several reminders, with the submission that the taxing provisions of SST Act, 2011 were in direct conflict with Section 236D of Income Tax Ordinance, 2001, whereby advance tax was payable on the booking of marriage hall / banquet by a person holding a function and that it being double taxation was against the Constitution. The Assistant Commissioner (Unit-2), not agreeing with the submission, passed an order compulsorily registered the appellant under section 24B read with 43(1) also imposing two penalties of Rs.10,000/- and Rs.100,000/- under sub-section(1) of Section 43 of the Act.

3. On appeal the Commissioner (Appeals) confirmed the order in original in toto and dismissed the appeal. Hence appeal filed before us.



4. The learned AR submitted that basic issue in this case is that charge of SST on the person acquiring the services of a marriage hall under Section 8 read with tariff heading 9801.3000 and 9801.6000 is double taxation as the same amount is being charged to income tax under section 236 D of Income Tax Ordinance, 2001 and tax is being collected through the same withholding agent who is also withholding tax under Income Tax Ordinance, 2011. He argued that taxation of the same income on goods or services was double taxation which was in clear violation of the Constitution. He also argued that these provisions of SST Act, 2011 are also in clear contradiction with Sindh Renting of Premises Ordinance, 1979 and same property cannot be subject to two different laws.

5. Ms. Nida Noor, AC filed parawise comments on the grounds of appeal and submitted that while under the provisions of Section 236D of Income Tax Ordinance, 2001 advance tax is recovered from a person arranging a function in a marriage hall and is adjustable against the final tax liability of the said person, but section 236D is not a charging section and does not create charge on the marriage hall owner. On the other hand section 8 of SST Act, 2011 read with tariff heading 9801.3000 is charging section and applies to the services rendered by the owner of a marriage hall. The only common factor is the marriage hall owner who is tax collector in income tax and tax payer in Sindh Sales Tax regime. About reference to Sindh Renting of Premises Ordinance, 1979 she argued that it was irrelevant because the very definition "renting of immovable property" under section 2(72B) of the Act excludes renting of immovable property by marriage halls and lawns, which are otherwise liable to tax under tariff heading 98.01 and the sub headings thereof. The definition of a marriage hall and lawn under section 2(59) also clarifies this issue and is in no way similar to renting of immovable property as alleged by the learned AR.

6. Since the AR of the appellant has equated Sindh Sales Tax on Services payable under SST Act, 2011, with Income Tax payable under section 236D of Income Tax Ordinance 2001, it is necessary to examine the provisions of section 236D of Income Tax Ordinance, 2001. Section 236D provides for collection of advance tax on functions and gathering and "every prescribed person shall collect advance tax at the rate specified in Div.XI of Part IV of the 1<sup>st</sup> Schedule on the total amount of the bill from a person arranging or holding a function in a marriage hall etc."

7. As discussed above Section 236D of Income Tax Ordinance, 2001 is not a charging section. Rather it puts responsibility on the marriage hall owner to collect income tax in advance from a prospective potential tax payer and that under sub-section (3) it is adjustable against normal tax liability for the relevant tax year of the person paying



advance tax. Further it does not create any liability on the recipient of service on account of final tax payable by him. It is important to note that it (advance tax) is distinguishable from withholding tax which is collected after ascertaining certain liability of income tax as well as sales tax. It is just an advance tax on the income of a potential tax payer and is neither final discharge of his liability nor it determines his actual liability for that tax year. On the other hand SST being imposed on the services rendered by the marriage hall and lawn owner is in a way the final discharge of his liability to the extent of services of marriage hall rendered by him for that tax period. The marriage hall owner in Income Tax law is the collector of advance income tax from the person booking a marriage hall and the credit of this advance tax goes to the customer who can adjust it against his total tax liability under section 236D(3). In S.S. Tax law the hall owner is the tax payer in terms of Section 8 rendering taxable service listed in 2<sup>nd</sup> Schedule. Since he plays different roles at two different regimes of taxation; namely collector on behalf of provincial government at one place and tax payer of Federal government at the other place there is no question of double taxation.

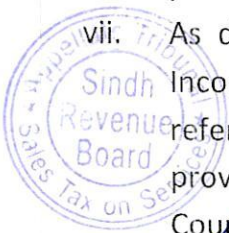
8. The domain of both the taxes is separate; one is a Federal Tax on income and the other a provincial tax on services. Secondly, while income tax is a direct tax, SST is an indirect tax. The payment of Income Tax by a marriage Hall owner is in fact advance tax collected on booking of the hall by a customer, as against his contingent liability, and is adjustable against his Income Tax liability for the relevant tax year. On the other hand SST is paid by the hall owner on the services rendered by him and is passed on to the recipient who is the end consumer. The Superior Courts have given judgments as to whether certain taxes which appear overlapping are not in the nature of double taxation. The Honorable Lahore High Court in its judgment reported as PLD 2011 Lahore 402 in Allied Bank Ltd. vs. District Officer Revenue decided on 13.04.2011 has held that:

*"The rule of avoidance of double taxation is merely a rule of construction; therefore, it ceases to have application when the legislature expressly enacts a law, which results a double taxation of the same income. The law so made cannot be held to be invalid merely on the ground that it results in double taxation. In the absence of a clear provisions stipulating double or multiple taxation levies, the courts would lean in favour of avoiding double taxation".*

9. After the above discussion, I have reached at the following conclusion.

- i. Provisions of Section 8 read with tariff headings 9801.3000 and 9801.6000 are specific about charging of such services which are rendered / provided by the marriage halls and lawns.

- ii. There is no denial of the fact by the appellant / his AR that the appellant, who owns a marriage hall provides such services as enlisted under tariff heading 9801.3000.
- iii. The appellant has not at any stage claimed exemption under SRB notification No.SRB-3-4/7/2013 of 18<sup>th</sup> June, 2013, either
- iv. The arguments of the learned AR about double jeopardy or double taxation is also ill-found. Both the provisions of law operate at different and distinct directions. It may be noted that section 236D of Income Tax Ordinance, 2001 provides for the collection of advance tax from the prospective customer of a marriage hall. It is neither a charging section nor it discharges the final liability of a prospective tax payer. The Income Tax so collected as advance tax is adjustable against the final tax liability of the person under sub-section (3) of 236D from whom it is collected. More important is that it is advance tax on the income of the said person. On the other hand Section 8 read with tariff heading 9801.3000 is a charging section. It recovers sales tax from the marriage hall or lawn owner and is 100% discharge of his tax liability in respect of the value / consideration of the said services for that tax period.
- v. The provisions of Section 8 read with 9801.3000 read with definition clauses of 2(59) and 2(72) are very distinct and are in no way in contradiction with any provision of Sindh Renting of Premises Ordinance, 1979.
- vi. The appellant was served a letter dated 23.07.2018 intimating him of his legal obligation to get himself registered under section 24. As there was no response, a show cause notice was issued on 01.08.2018 and duly served on him. It was responded by a letter dated 05.09.2018 whereby he challenged the vires of the sales tax as double jeopardy in the presence of section 236D of Income Tax Ordinance, 2001. The AC-SRB proceeded to register him under section 24B and imposed penalty under section 43(1). In my opinion there is no illegality in the said show cause notice nor order under section 24B, nor there was any procedural lapse in issuing of show cause notice.
- vii. As discussed above the provisions of sales tax on services are distinct from Income Tax law and there is no double jeopardy caused in this case either. As referred above the higher Courts have held that when there are specific provisions of taxation there is no double taxation. The judgment of Lahore High Court cited as PLD 2011 Lahore 402 in Allied Bank Ltd. vs. District Officer Revenue is very much in support of the department. Relevant part is reproduced below:





*"The rule of avoidance of double taxation is merely a rule of construction; therefore, it ceases to have application when the legislature expressly enacts a law, which results in double taxation of the same income. The law so made cannot be held to be invalid merely on the ground that it results in double taxation. In the absence of a clear provisions stipulating double or multiple levies, the courts would lean in favour of avoiding double taxation".*

10. In view of the above findings I hold that the impugned order of Commissioner (Appeals) upholding the order under section 24B is legal and is hereby confirmed.

11. As regards penalties of Rs.100,000 and Rs.10,000 imposed for not complying with the order under section 42B and for not getting registered under section 24 voluntarily, I believe that after the informal notice / letter dated 23.07.2018 advising the appellant to get registered under section 24, the appellant had no reason not to get registered. Subsequently there was no compliance of show cause notice and then of order under section 24B, either. Hence I confirm penalty of Rs.10,000 under section 43(1). About the other penalty of Rs.100,000 under section 43(1), I allow the appellant 15 days time from the date of this order to get registered and file return under section 30. This penalty shall stand deleted if these orders are complied with. However, in case of non-compliance the penalty orders shall stand confirmed

11. The appeal is disposed of as above.

  
(Agha Kafeel Barik)  
MEMBER TECHNICAL  
Certified to be True Copy

Karachi

Dated: 30.04.2019

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.

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on 03/05/19

Order Dispatched on 03/05/19

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Registrar