

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

Appeal no: 37/2019

M/s Car Planet Appellant
VERSUS
Assistant Commissioner (Unit-5) SRB Respondent
Mr. Faiq Raza Rizvi Advocate..... For Appellant
Mr. Liaquat Ali Bajeer AC. S.R.B..... For Respondent
Date of hearing: 08-05-2019
Date of order: 17-05-2019

ORDER

Mr. Muhammad Ashfaq Balouch:

Present appeal has been filed by the above named appellant, challenging order in appeal No: 271/2016 dated 02-March-2019 (hereinafter referred to as OIA) passed by Commissioner (Appeals) SRB, whereby Order In Original No:741/2014 dated 08th August, 2016(hereinafter referred to as OIO) ,passed by Ms. Anbreem Fatima A.C unit-10 SRB Karachi was partly confirmed and penalty was conditionally waived.

(2). Brief history of this appeal is that against the OIO No. 741/2014, which was confirmed by the Learned Commissioner (Appeals) No. 271/2016 was filed before this Tribunal, matter was remanded by this Tribunal with directions. The Learned Commissioner (Appeals) after remand of this case heard both the parties and confirmed the order of Assessing Officer. Appellant aggrieved from the order of Learned Commissioner (Appeals) filed present appeal before this tribunal which was numbered as At-37/2019.

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(3). Brief facts as disclosed in OIO are that appellant is rendering the services of car and automobile dealer, classified under tariff heading 9806.4000 of the Second Schedule of the Sindh Sales Tax on the services Act 2011 (hereinafter referred to as the "Act, 2011").

(4). Allegations against the respondent are that though appellant is providing taxable services pertaining to Act 2011 but failed to get compulsory registration, therefore, penalty of Rs. 10,000/- for failure to file application for registration before providing taxable services under section of the Act 2011. Further penalty of Rs. 100000/- under serial No. 1 of the Table in section 43 of the Act 2011, were imposed.

(5). Respondent/department filed the parawise comments but appellant side remained absent without intimation.

(6). Mr. Liaquat Ali Bajeer A.C SRB for the respondent has argued that appellant is car dealer and name of appellant appear on the website www.pakvehicles.com as well as www.pakistanplaces.com as car dealer and location of the appellant is Shahra-e-Qaideen, where all the others car dealers are doing their business and appellant is providing services of car or automobile dealers, which is classified under tariff heading 9806.4000 of the Second Schedule to Act 2011. He has further argued that President of Automotive Traders and Importers Association Karachi (ATIAK) also shared information with Assessing Officer. As per that information 318 members are engaged in providing services of car dealers, it was further argued that majority of these members car dealers have got themselves have got registered with the SRB, in above said service category of car dealers.

I have heard the arguments of department and perused the record.

From the perusal of OIO and OIA it appears that appellant is engaged in two types of arrangements for conducting the present business.

(i) 1st Arrangement is that appellant merely causes sale between the two parties, token money is paid to the owner of car, and thereafter the car is sold to 3rd party directly, without taking custody and possession of the car.

(ii) The second type of transaction is the appellant pays the total cost of the car, takes the position on basis of "open transfer letter". In this respect appellant before the learned Commissioner (Appeals) submitted invoices of sales of automobile, which shows that all these invoices were issued by appellant, further these invoices shows that appellant is neither buyer nor a seller but acted as an intermediary and facilitator. These invoices further reveals that purchase and sell were made on basis of "open transfer letter". Transaction shows that appellant provided services to buyer and seller, as the sell was caused on the basis of "open transfer letter", which in its nature is activity of dealer, within the meaning of Chapter III Provincial Motors Vehicles Ordinance 1969. This activity is covered under definition of "Car or automobile dealer" as contend in section 2 20(B) of the SST Act 2011. Which includes the services rendered in relation to sale, purchase, transfer leasing, marketing or booking of cars and automobiles. It is also evident from the record that appellant is involved in sell and purchase of cars. Further the extract of websites supra brought on the record, shows that website viz "Pakvehicles.com" which pertain to Pak dealer advertisement. The name of the appellant appears in these websites as "car dealers".

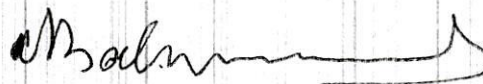
From the above circumstances it is evident that appellant is involved in sale purchase of the car as intermediary, facilitator and providing the services



which falls within the ambit of section 2 (20B) of the Act 2011 and tariff heading 9806.4000 of the second schedule of Sindh sales tax service act 2011. Therefore, is liable to be registered with S.R.B. order passed by Learned Commissioner is legal and proper to the extent of registration of appellant with SRB.

So far the penalties are concerned it is a decided issue at the level of Hon'ble Superior Courts and this Tribunal that penalty only can be imposed, when the department has been able to prove mensrea against the appellant. As it is apparent from the record that there was dispute between the parties regarding the definitions of services and supplies of goods, therefore, there was no melafide of part of appellant. Hence penalties suggested by the department are not proper and are hereby waived.

Appeal is disposed off in above terms and findings.



(Muhammad Ashfaq Balouch)

Judicial Member

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