

SB-1

APPEAL NO. AT-71/2019

M/s Shahid Jamal Appellant

Versus

Deputy Commissioner, Unit-22, SRB, Karachi Respondent

Date of Filing of Appeal: 23.09.2019

Date of hearing: 18.08.2020

Date of Order: 27.08.2020

Mr. Nasir Altaf, ACMA for Appellant

Ms. Umi Rabbab, DR-AC, SRB for Respondent



ORDER

Justice [®] Nadeem Azhar Siddiqi: This appeal has been filed by the

appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) in No.153/2019 dated 08.07.2019 passed by the Commissioner (Appeals-II) in Appeal NO. 188/2016 confirming the Order in Original (hereinafter referred to as the OIO) No. 427/2016 dated 31.05.2016 passed by the Deputy Commissioner (Mr. Raheel Anwar Soomro) Unit-22, SRB, Karachi.

02. The facts of the case as mentioned in the OIO were that the service of renting of immovable property was declared taxable service in terms of section 3 (1) read with section 2 (72C) read with Tariff Heading 9806.3000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) with effect from 1st July, 2015 and was liable to Sindh Sales Tax (SST) tax @ 6%.

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03. It was alleged in the OIO that the appellant was providing or rendering the taxable service of renting of immovable property (9806,3000) to "M/s SHAMAL MEDIA SERVICES (PVT.) LIMITED" since July, 2015 and despite providing of taxable services the appellant failed to get himself registered with SRB and thus violated the provision of section 24 of the Act and rules made thereunder.

04. The appellant was called upon through show-cause notice (SCN) dated 20.05.2016 to explain as to why he should not be compulsorily registered under section 24B of the Act and why penalty for violation of section 24 of the Act as provided in section 43 of the Act should not be imposed.

05. It was mentioned in the OIO that on the first date of hearing i.e. 30.05.2016 the appellant's representative submitted adjournment letter without letter of authorization and without any reason or ground for grant of adjournment, but it is not clear from the OIO whether the time was allowed or not. However, it is evident from the OIO that the Assessing Officer (AO) without providing proper opportunity to the appellant to file reply or to appear for hearing passed an ex-parte order on 31.05.2016 for compulsorily registration of appellant. The AO also imposed penalty of Rs.100,000/= in case the appellant challenged the OIO before the Commissioner (Appeals-II) who dismissed the appeal and upheld the OIO to the extent of compulsory registration of appellant. However the penalty was reduced from Rs.100,000/= to 10,000/=.

08. The representative of the appellant challenged the OIA before this forum and submitted as under:-

(i) The Deputy Commissioner (Withholding) was not empowered to issue notice/order for registration of the service provider under section 24B of the Act.

(ii) There was no element of service involved in renting of immovable property.

(iii) The SCN was issued on 20.05.2016 after the addition of section 2(72C) of the Act through Sindh Sales Tax on Services (Amendment) Ordinance, 2015. The said amendment was

M/S



The judgment of the High Court in Young's case was challenged in Supreme Court of Pakistan. On a question from the Tribunal the AC submitted that she was not aware about the proceedings before the Supreme Court and is also not aware whether any stay was granted by the Hon'ble Supreme Court of Pakistan.

The appellant was rightly registered compulsorily as he was engaged in providing taxable service of renting of immovable property, which fell under Tariff Heading: 9806.3000. (validation clause) of the Act.

The SCN was issued on 20.05.2016 before amendment in the Act and CIO was passed on 31.05.2016 and the OIA was rightly passed on 08.07.2019 after amendment in the Act dated 11.04.2018 with retrospective effect and the same was covered by section 84

amended and defects if any in section 4 of the Act were cured. Private Limited supra section 2(72C) and Section 4 of the Act were in view of the decision of the High Court of Sindh in Young's



09. The AC-DR on behalf of respondent submitted as under:-

challenged and the Sindh High Court vide its judgment in the case of Young's (Private) Limited versus Province of Sindh & others (SRB), reported as 2019 PTD 389 in which it was held that "mere renting of immovable property by a landlord to a tenant on rent or for consideration does not involve any element of providing any taxable service, therefore the amount of rent received by the landlord from the tenant could not be subject to tax". He also relied upon another judgment of Sindh High Court in case of M/s Mustaqim Dyeing & Printing Industries versus Province of Sindh (SRB), reported as 2019 PTD 2251 in which reliance was placed on the judgment in Young's case as mentioned supra and it was held that "mere renting of immovable property by a landlord to a tenant on rent for consideration did not involve any element of providing any taxable service, therefore the amount of rent received by the landlord from the tenant could not be subjected to tax".

(iv)

(iii)

(ii)

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13. The appellant was compulsorily registered under section 24B of the Act. Section 24 of the Act provides that registration is required for all persons who

thus it was of no legal effect.

the Act on the basis of SCN which was issued during the existence of old law 08.07.2019 after the substitution of clause (b) of sub-section (1) of section 4 of supra thus SCN and OIO have no legal effect. The OIA was passed on and after the pronouncement of judgment of the High Court in Young's case 26.05.2016 and OIO was passed on 24.06.2016 during the existence of old law from 01.07.2015. However, in the instant case the SCN was issued on section (4) of the Act was substituted on 04.04.2018 with retrospective effect decided on 18th August, 2017. Thereafter clause (b) of sub-section (1) of 12. As per the judgment reported in Young's case the petitions were

record made available before me.

11. I have heard the learned representative of the parties and perused the

cured or not will be decided in those petitions.

defect pointed out in the judgment of Young's case supra was before the High Court of Sindh and the question whether the amendment in the Act was also challenged in several petitions by the High Court was not cured.



Act the element of service was lacking and the defect pointed out

(ii) That even after amendment in Section 2(72C) and Section 4 the

(i) The Commissioner (Appeals) erroneously passed OIA after the judgment of the Hon'ble High Court in Young's Case.

under:-

10. In reply Mr. Nasir Altaf on behalf of the appellant further submitted as

on the given date and time.

(vii) The Appellant was given fair opportunity for appearance in person on 30th May, 2016 at 11.15 AM, but the Appellant failed to appear

No.AT-49/2018, Dairy Farms V/s SRB.

(v) The SCN was issued and order was passed by an officer having jurisdiction and referred to an Order of Tribunal passed in Appeal

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17. The appellant has also challenged the OIO on the ground that Deputy Commissioner (Withholding) was not empowered to issue notice/order for registration as a service provider under section 24B of the Act. A Notification dated 6th July, 2015 issued by SRB under sect on 34 read with section 35 of the

16. In view of the above discussions it is held that no opportunity of hearing was provided to the appellant and the OIO was passed in violation of sub section (2) of section 24B of the Act and cannot be sustained.

15. It appears to me that the officers who are vested with quasi-judicial powers are not even aware about the basic principles of law. It is expected that the Board will look into the matter and take necessary steps to avoid repetition of such acts in future and shall instruct the officers to follow the judgments of the superior courts. This observation was also made in an early decision dated 14.06.2019 of this Tribunal in Appeal No. AT-18/2019, in the case of M/s HI Tech Engineers Versus Commissioner Appeals, SRB, and another but the same was ignored for obvious reasons.

14. Article 4 of the Constitution of Pakistan provides it is the inalienable right of every citizen that he is to be dealt with in accordance with law and to enjoy the protection of law. After insertion of Article 10A in the Constitution a person shall be entitled to a fair trial and due process of law. Due process of law includes the right to be treated according to law and right of hearing is the part of due process of law.

are residents and providing services listed in the Second Schedule to the Act from their registered office or place of business in Sindh. Sub-section (2) of section 24B provides that no person may be registered compulsorily without giving an advance notice and an opportunity of being heard. In the instant case the notice was given but no right of hearing was provided to the appellant. As far as the proper right of hearing is concerned it is noted that as per OIO the SCN was issued on 20.05.2016 and on the first date of hearing i.e. 30.05.2016 despite request of adjournment by the appellant the proceedings were finalized and OIO was announced on 31.05.2016. Apparently the proceedings were concluded in unnecessary haste without affording proper right of hearing. Strangely the proceeding of SCN was finalized within a period of ten days.



Act was placed on record to show that on 20.05.2016 the date of issuance of SCN, Unit-22 was vested with the powers to deal with the cases of withholding of SST, whereas the jurisdiction to deal with the cases of renting of immovable property was vested in Unit-12. Another Notification of the same date issued by SRB in exercise of powers under section 34 read with section 35 of the Act showed that on the date of issuance of SCN Unit-12 was headed by Ms. Anum Shaikh, Assistant Commissioner and Unit-22 was headed by Mr. Raheel Anwar Soomro, Deputy Commissioner, SRB. It is apparent from the above two Notifications that on the date of issuance of SCN dated 20.05.2016 and passing of OIO dated 31.05.2016, no jurisdiction was vested in Unit-22 to deal with the cases of renting of immovable property.

18. In view of the above discussion the appeal is allowed and the OIO and OIA are set aside and annulled. The copy of this order may be provided to the learned representatives of the parties.

Karachi
Dated: 27.08.2020
Chairman

(Justice Nadeem Azhar Siddiqi)

Certified to be True Copy

Copies supplied for compliance:-

1. The Appellant through authorized Representative.
SINDH REVENUE BOARD
APPELLATE TRIBUNAL
REGISTRAR

2. The Assistant Commissioner (Unit-) SRB, Karachi.

Copy for information to:-

3. The Chairman, SRB, Karachi.

4. The Commissioner (Appeals-II), SRB, Karachi.

5. Office copy.

6. Guard file.

Order Dispatched on

Order issued on

15/09/2020
15/09/2020

Registrar

Registrar