

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI

(SRB)
APPEAL NO. AT-124/2022

M/s Abu Dawood Trading Company Pakistan Ltd.
3rd Floor, Executive Tower, Dolmen City,
Karachi.....Appellant

Versus

The Assistant Commissioner (Unit-24),
Sindh Revenue Board (SRB)
02nd Floor, Shaheen Complex Building
M.R. Kiyani Road Karachi.....Respondent

Date of filing of Appeal: 22.07.2022
Date of hearing: 22.09.2022
Date of Order: 02.11.2022

Mr. Ejaz Ahmed, ACA and Ms. Farah Jamil, ACA for appellant.

Mr. Asif Rahoojo, AC-SRB for the 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) No. 67/2022 dated 25.05.2022 passed by the Commissioner (Appeals), SRB in Appeal No. 06/2021 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 04/2021 dated 05.01.2021 passed by Ms. Nida Noor, Assistant Commissioner, (Unit-24) SRB, Karachi.

02. The facts as stated in the OIO were that the appellant bearing NTN: 3039736-7, was e-sign up as withholding agent in terms of sub-rule (2) of rule 1 of the Sindh Sales Tax Special Procedure (withholding) Rules, 2014

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(here in after stated as withholding Rules). It was stated that the appellant was depositing the withheld Sindh Sales Tax (SST) on self-determination basis. It was further stated that under sub rule (10) of rule 3 of Withholding Rules a withholding agent was liable to produce all the records/information requisitioned by an officer of SRB.

03. The appellant vide SRB letter dated 15.07.2020 was required to provide copy of annual audited account for the financial year ended 30-June, 2019 or 31-December 2019 in order to determine its position in relation to withholding of SST on services. The appellant was provided further opportunities to provide documents asked for vide letters dated 25.07.2020, 12.08.2020 and 14.09.2020, but to no avail. The appellant was also informed that non-compliance or partial-compliance of any of the provision of Withholding Rules was an offence punishable under Serial No. 11A of the Table under section 43 of the Act.

04. The appellant was served with a Show-Cause Notice (SCN) dated 09.10.2020 to explain as to why penalty under Serial No. 11A of the Table section 43 of the Act may not be Imposed for contravention of provision of sub-rule (10) of rule 3 of the Withholding Rules.

05. The appellant on 13.11.2020 through its representative submitted reply dated 16.10.2020. It was stated in the reply that *"under Rule 3(10) of Withholding Rules, the officer of the SRB may only ask information or data which are essential for carrying out the purpose of withholding Rules. Whereas your worthy office has required to submit audited accounts withhold considering the fact that the financial statement of the company contain information pertaining to activity carried out in whole Pakistan while, the scope of SRB is restricted to economic activity undertaken in the province of Sindh and applicable withholding thereon"*. It was further stated that *"In connection of subject SCN we submit that SCN is issued without reference to the relevant provision of the Act. In the absence of such reference we submit that the notice carrying the defect of vagueness and is not sustainable in the eyes of law .Its settled principle that when initial*



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notice is illegal all the subsequent proceedings and superstructure built thereon are also illegal". The appellant in the reply further stated that "Without prejudice to the above, we submit that SCN under Act can only be issued to withholding agent where there is reason to believe based on substantial evidence that there is short payment of tax. However, no evidence has been confronted in this regard. Hence the subject SCN is illegal and void and not tenable under the eyes of law". The appellant in the reply also challenged the imposing of penalty.

06. The Assessing (AO) after considering the facts of the case passed OIO imposing penalty of Rs. 50,000/= against the appellant under Serial No. 11A of the Table under section 43 of the Act.

07. The appellant challenged the said OIO by filing appeal under section 57 (1) of the Act before Commissioner (Appeals), SRB who dismissed the appeal as under:-

"7 In view of the case above- mentioned position the OIO is maintained and the Appellant is accordingly directed in its own interest to provide the copy of the Accounts required by the Respondent, within 07 days of the receipt of this order. Failing and disregarding which the respondent shall be at liberty to recover the penal accounts and to take further actions for ascertainment of the Accounts in accordance with law. Order accordingly".

08. The learned representative of the appellant Mr. Ejaz Ahmed ACA submitted as under:-



i. The SCN was illegal for the reason that no provision of the Act was mentioned therein.

ii. The Act does not impose any liability upon the Withholding Agent to provide Financial Statement which contained the particular/details of whole of Pakistan.

iii. The Act does not provide any specific provision to penalize a Withholding Agent for non-providing the Financial Statements.

iv. The provision of record keeping for Withholding Agent i.e. sub-rule (2) of Rule 5 of Withholding Rules was inserted in the Act vide Sindh Finance Act, 2020 dated 01.07.2020 having no retrospective effect and

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the said provision was inserted without backing of any provision in the parent Act.

v. The penalty under Serial No. 11A of the Table under section 11A of the Act was erroneously imposed without backing of law.

vi. The Officer who issued the SCN and passed OIO has no such power and could not adjudicate the matter.

09. The learned AC-SRB Mr. Asif Ali Rahoojo submitted as under:-

i. The SCN was properly and competently issued by duly authorized officer of SRB under sub-rule (10) of rule 3 of the Withholding Rules, which provide that the withholding agent shall furnish to the Officer of the SRB all such information or data as may be required by him for carrying out the purpose of this rules.

ii. The SRB Board under sub-section (1) of section 13 of the Act has the power to prescribe special procedure for the payment of tax, valuation of taxable services, registration, record keeping, invoicing or billing requirements, returns and other related matters.

iii. The provision of sub-rule (10) of rule 3 and sub-rule (2) of rule 5 of the Withholding Rules were framed under sub-section (1) of section 13 of the Act.

iv. The SRB, Board and the Officer of SRB under sub-section (4) of section 52 of the Act is vested with the power to call for information, record, data and documents from any person.

It was not a valid ground to avoid furnishing Financial that the same contain the data of other jurisdiction. The services pertained to other province on production of evidence could be excluded.

vi. The financials are necessary to check whether the withholding agent has rightly deducted and deposited the SST with SRB.

vii. The penalty under serial No. 11A of the Table under section 43 of the Act was rightly imposed as the appellant has violated the Withholding Rules by not providing the documents asked for.

viii. He relied upon the order dated 08.06.2018 passed by this Tribunal in AT-No. 26/2018, M/s Kohinoor Battery Manufacturing vs. AC-SRB in



which the penalty for non-furnishing of documents was upheld, though reduce the quantum.

10. The learned representative of the appellant in rebuttal submitted that in the SCN sub-section (4) of section 52 was not invoked and at this stage the same could not be relied upon to direct the appellant to produce the documents.

11. I have heard the learned representatives of the parties and perused the record made available before me.

12. It was not disputed that the appellant is a withholding agent and duly e-signed up as such and under sub-rule (1) of rule 3 of the Withholding Rules was required to deduct and withhold the SST as prescribed in the Withholding Rules from the payment made or to be made to the service provider.

13. The SCN was issued to the appellant invoking sub-rule (10) of the rule 3 of the Withholding Rules for providing the copy of annual audited account for the financial year ended 30th June, 2019 or 31st December, 2019

In order to determine its position in relation to withholding of SST. However, the appellant declined to provide the audited accounts on the grounds mentioned in its Reply to SCN.

14. The main argument of the representative of the appellant was that the Act does not contain any provision under which the document and information could be called from the withholding agent. I do not found any force in this argument. Apparently the Withholding Rules were framed under sub-section (1) of section 13 of the Act which clearly provided that the SRB Board have the power to prescribe special procedure for the payment of tax, valuation of taxable services, registration, record keeping, invoicing or billing requirements, returns and other related matters. It may be seen that sub-section (1) of section 13 starts with a non-obstante clause meaning that the same has overriding effect on the other provisions of the Act.



15. The SCN was issued for producing the Financials under sub-rule (10) of rule 3 of the Withholding Rules, which provide that the withholding agent shall furnish to the Officer of the SRB all such information or data as may be required by him for carrying out the purpose of this rules. The purpose of calling of the Financials was to ascertain whether the SST was correctly withheld and deposited with SRB and come within ambit of the carrying out the purpose of rules. This provision is the part of the Withholding Rules issued under sub-section (1) of section 13 of the Act which was lawfully framed and notified under the Act and the appellant was obliged to comply the same.

16. The reason/ground offered by the appellant for not producing the Financials was that it contained data of other jurisdictions. This is not a valid ground or reason to refuse production of Financials. The AC was correct in saying that on submission of evidence the data of other jurisdictions could be easily separated and excluded. The appellant by refusing to produce the Financial has failed to discharge its statutory obligation.

17. The AC relied upon sub-section (4) of section 52 of the Act. Section 52 of the Act is dealing with the obligation to produce documents and provide information. Sub-section (4) of the same provides that every person, department, company or organization shall furnish the information and data and documents requisitioned by the Board or the Officer of the SRB. In this provision instead of using the words "registered person" or "withholding agent" the common words of general meaning were used which make the provision exhaustive covering large number of categories and is not restricted to "registered person" or "withholding agent". However, again this provision was not invoked in the SCN and at this stage could not be pressed into service.

18. The AC also refers to sub-rule (2) of rule 5 of the Withholding Rules, which read as under:-

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“(2) The withholding agent shall maintain the records as prescribed in section 26 of the Act and in sub-rule (2A) of rule 29 of the Sindh Sales Tax on Services Rules, 2011, for a period of 8 years from the tax period to which it relates. The withholding agent shall also maintain, for a period of 8 years from the tax period to which it relates, the record of the tax invoices received by him from the service providers and the documents and banking instruments showing the withholding agents’ compliance of the provisions of section 73 of the Sales Tax Act, 1990, and of clause (i) of rule 22A of the Sindh Sales Tax on Services Rules, 2011.]”.

The representative of the appellant submitted that the above provision was inserted in July 2020 having no retrospective effect. The provision was added in a procedural law and in a fit case it could be applied retrospectively. The SCN was issued after insertion of the provision in the Act and it is not the case of retrospective application of Withholding Rules. However since in this case this provision was not invoked in the SCN the same at this stage could not be invoked.

19. The penalty of Rs.50,000/= was imposed on the appellant under Serial No. 11A of the Table under section 43 of the Act, which provides that where a person contravenes any of the provisions of the rules or notifications issued in relation to withholding or deduction of tax or payment of tax so withheld or deducted, such person shall be liable to pay a penalty of Rs.50,000/= or an amount equal to the amount of tax involved, whichever is higher. Apparently this provision was not applicable. The allegation was that the appellant failed to produce the Financials in response to the SCN and the allegations in the SCN were not that that the appellant contravenes any of the provisions of the rules or notifications issued in relation to withholding or deduction of tax or payment of tax so withheld or deducted.



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20. In my view the proper provision under which the penalty could be imposed is Serial No. 15 of the Table under section 43 of the Act, which provides that where any person fails to provide the document or record or information or date or refuses to allow the officer of the SRB to take extracts from or make copies of the document or record or information nor data or fails to appear before and officer of SRB or fails to answer any question put to him, such person shall be liable to pay penalty of Rs.100,000/=. However since this provision was not invoked in the SCN at this stage same could not press into service.

21. In view of the above discussions this appeal is partly allowed to the extent of imposing penalty of Rs.50,000/= under a wrong provision of law. The appeal is dismissed in respect of production of Financials and the appellant is required to produce the same within one week from the date of receipt of copy of this order.

22. The appeal is disposed of. The copy of the order may be provided to the learned representatives of the parties.

Karachi: -
Dated: 02.11.2022


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Certified to be True Copy

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Deputy Commissioner, (Unit-24), SRB, Karachi for compliance

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office Copy.
- 5) Guard File.

Order issued on 02/11/2022

Order Dispatched on 02/11/2022

Registrar

Registrar