

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Agha Faisal

Special Sales Tax Reference Application
No. 400 of 2017

Text (Private) Limited
Versus
The Commissioner-I & another

Date of Hearing: 11.05.2023
Applicant: Through Mr. Salman Aziz Advocate.
Respondents: Through Mr. Shamshad Ahmad Narejo Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This Reference is pressed for adjudication for questions No.3(b) and 3(c), as trimmed down by the applicant while he addressed the Reference. The two questions, pressed into service, are as under:-

“b) Whether the learned Appellate Tribunal erred in holding that the applicant is engaged in providing “telecommunication services” chargeable to sales-tax at 19.5%, even though such services have never been provided by the applicant till date?”

c) Whether the learned Appellate Tribunal erred in holding that the applicant is not providing “Call Centre” services falling under tariff heading 9835.000?”

2. Scrutiny of sales tax return SST-03, filed by the applicant as being a registered person, ended up in issuance of show-cause notice dated 24.12.2014, which corresponds to a deposit of amount at the rate of 16% on the value of taxable services as against the telecommunication services required and liable to Sindh Sales Tax at 19.5% on the value of taxable services w.e.f 01.07.2011 onwards. The applicant within the frame of show-cause notice (as could be seen from the frame of show-cause notice) has provided/rendered the aforesaid taxable services for a

tax period July 2012 to June 2014 covered under Tariff Heading 98.12 of the Second Schedule to Sindh Sales Tax on Services Act, 2011. The requisite amount was considered recoverable from the registered person.

3. The Order-in-Original, on consideration of the case made out in the show-cause notice, imposed and/or directed recovery of short paid amount along with default surcharge with penalty. Such order was assailed before the Commissioner (Appeals) Sindh Revenue Board, which adjudged an amount of Rs.2,761,942/- and penalty of Rs.138,097/- against Offence No.3 and default surcharge under section 44, whereas the Order-in-Original was set aside to the extent of penalty of Rs.4,942,658/- imposed against Offence No.2 of Table of Section 43.

4. Aggrieved of above, the applicant preferred an appeal before Appellate Tribunal Sindh Revenue Board. The only leniency shown by the Appellate Tribunal was that if applicant deposits principal amount of Sindh Sales Tax involved within 30 days of the receipt of the order then as a special case penalty amount of Rs.138,097/- against Offence No.3 of Table under section 43 of the Act 2011 would not be recovered. For the default surcharge the Appellate Tribunal recommended that Sindh Revenue Board may consider exemption of at least 50% of the amount of default surcharge as a special case.

5. As against these concurrent findings, this Reference has been preferred on the two questions of law, identified above.

6. Heard and perused record.

7. At the very outset none of the two questions could be reckoned as questions of law arising out of the findings discussed above. The stance of the applicant that mistakenly it got itself registered as a "telecommunication service provider" with Sindh Revenue Board at the relevant time, is of no count as there is nothing in support thereof and

to the contrary sufficient material was available before the forum which includes annual audited statements etc. which discussed and concluded on the count of facts as applicant being telecommunication service provider. It remained unsubstantiated on the part of the applicant in the light of the status, as adjudged by the applicant itself. The principal activity of the applicant includes the services of information technology and telecommunication products which include the promotion and sponsor of telecommunication and internet products and service events on behalf of various clients.


8. The instances of the applicant that their activities could only be summarized as a call center has also not influenced any of the fora below. The understanding of memorandum alone is not decisive to adjudge the activities being undertaken by the applicant itself for taxation purpose and hence it will not form a persuasive object for the activities undertaken by the applicant. The Appellate Tribunal which is a last fact finding forum has concluded that no evidence as to the activity of a call center agent (which could attract different rate of levy), has been provided and produced by the applicant, notwithstanding the fact that the evidence available concludes that the activity is of a telecommunication service, as could be seen from the financial statements of the applicant to which no rebuttal was available. If applicant was/is a call center service provider, it was mandatory for it to be registered with PSEB to which no response was made. In fact it (applicant) was at the relevant time never registered with PSEB and since it was a mandatory requirement, it cannot be presumed to have been operating as a call center.

9. As observed above, the two questions in fact are not questions of law; rather questions of fact which facts were conclusively determined by the three forums below, last being the Appellate Tribunal which

order is impugned before us under Reference jurisdiction. No interference as such is required and the questions are answered in "negative" i.e. against the applicant and in favour of the respondents.

10. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, Sindh Revenue Board, Karachi, as required by section 63(5) of Sindh Sales Tax on Services Act, 2011.


JUDGE


JUDGE
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