

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD KARACHI

APPEAL NO. AT-21/2016

M/s Al-Abid Silk Mills (Pvt) Limited.....Appellant

Versus

The Commissioner (Appeals), SRB Karachi.....Respondent

Mr. Khalid Siddiqi Advocate for appellant

Ms. Anbreen Fatima AC, SRB for Respondent

Date of hearing: 19.05.2016

Date of Order: 24.06.2016

ORDER

Justice (R) Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-appeal No. 13/2016 dated 23.02.2016 passed by the Commissioner (Appeals) in Appeal No. 210/2015 confirming Order-in-Original No. 491/2015 dated 19.10.2015 passed by the Assistant Commissioner (Ms. Anbreen Fatima), SRB, Karachi.

1. In short, the facts of the case as stated in Order-in-Original are that the appellant are engaged in providing or rendering services in respect of manufacturing or processing for others on toll basis falling under tariff heading 9830.0000 of the Second Schedule of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) at the rate of 16% w.e.f 01.07.2013 and at the rate of 15% w.e.f. 1st July, 2014 till 30th June, 2015.

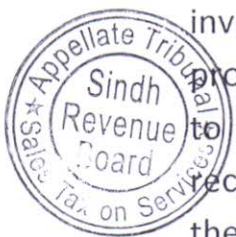
2. The allegations against the appellant are that during the scrutiny of record i.e. Note No. 26 of annual audit accounts for the year ended June, 2014 and unaudited accounts for the periods from July, 2014 to March, 2015, it was observed that appellant had earned sales revenue of Rs.450,359,982/= during the periods from July, 2013 to June, 2014



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and Rs.222,902,255/= for the tax periods from July 2014 to March 2015 which involve the Sindh sales tax of Rs.72,057,,597/= (Rs.450,359,982/= X 16%) and Rs.33,435,323/= (Rs. 222,902,255/= X 15%) respectively. It was further alleged that despite providing the taxable services of 9830.0000 the appellant neither get itself enrolled with SRB nor have deposited due amount of Sindh Sales Tax.

3. The appellant was served with a Show Cause Notice Dated 02.06.2015 as to why tax liabilities may not be assessed and determined. The appellant neither replied the show cause notice nor appeared before the Assessing Officer. Finally ex-parte order-in-original dated 19.10.2015 was passed for compulsory registration and imposing penalty of Rs.5,274,646/=. The tax was assessed in the sum of Rs.105,492,920/= along with default surcharge and penalty in the sum of Rs.1,711,032/= was also imposed.
4. The Respondent challenged the Order-in-Original by way of filing of Appeal No.210/2015 before the Commissioner (Appeals) who dismissed the Appeal, vide Order dated 23.02.2016 confirming the Order-in-Original and that order-in-appeal is being challenged before this forum.
5. Mr.Khalid Siddiqi Advocate for the appellant submits that the appellant are manufacturer and exporter and is registered with FBR and since the appellant is not providing any service it is not liable to be registered with SRB. He then submits that the appellant are involved in processing activity and are manufacturer and also do processing of goods owned by other persons and pay sales tax @3% to Government of Pakistan. He further submits that the appellant received grey cloth and processed it with the raw material owned by the appellant and after processing the grey cloth becomes finished goods and returned to the owners. He then submits that neither any show-cause notice was served nor other correspondence mentioned in the order-in-original was ever served upon the appellant as the factory was closed. The learned advocate also raised the issue of

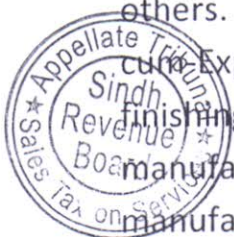


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double taxation and submits that after 18th amendment in the Constitution the provinces can levy sales tax on services and since the appellant is not providing any service it is not liable to pay any sales tax. He then submits that due to double taxation the export will be collapsed. The learned advocate relied upon the reported case of Habib Jute Mills limited versus Province of Sindh 2012 PTD 901.

6. Ms. Anbreen Fatima AC, SRB submits that the appellant is not only the manufacturer-cum-exporter but also involved in processing activities on toll basis for others and the said activity of toll processing or manufacturing is covered under the scope of services and the said services provided or rendered by appellant falls under tariff heading 9830.0000 and referred to a judgment of High Court of Sindh reported as 2006 PTD 1459. She then submits that show cause-notice dated 02.06.15 was properly served upon the appellant on 03.06.2015 and placed on record the report of courier. She further submits that all correspondences were properly served upon the appellant and placed the courier receipts on record. She then submits that provincial levy on the processing activity will not result in double taxation and submit that the Federation has taxed the manufacturer and not the service provider and both the orders were properly passed.
7. We have heard the learned representative of the parties and perused the record made available before us.
8. This is not disputed that the appellant used to finished goods for others. As per the appellant it is registered with FBR as Manufacturer-cum-Exporter and paying sales tax @ 3%. The question is whether finishing of goods owned by others comes with the definition of manufacturing and export or the same come within the definition of manufacturing or processing for others on toll basis. Rule 42 H of the Sindh Sales Tax on Services Rules, 2011 provides that the provisions of this rule shall apply to the persons (hereinafter called "toll manufacturer or processor) providing or rendering the services in the matter of manufacturing or processing for others on toll basis. Sub-



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rule (2) provides that every such toll manufacturer or processor who renders the services in the matter of manufacturing or processing for others on toll basis shall be liable to registration under section 24 of the Act, read with the rules prescribed under Chapter-II of the rules. Sub-rule (3) provided that the value of the taxable services for the levy of tax shall be the gross amount charged for the services provided or rendered. From the above provisions it is clear that providing or rendering the services in the matter of manufacturing or processing for others on toll basis is a service covered by tariff heading 9830.0000. The words "Toll Manufacturing" has not been defined in the Act or the Rules made thereunder. The words "Toll Manufacturing" has been defined in the Black's Law Dictionary Tenth Edition that *"toll manufacturing (1977) An arrangement under which a customer provides the materials for a manufacturing process and receives the finished goods from the manufacturer. The same party owns both the input and the output of the manufacturing process. This is a specialized form of contract manufacturing. – Also termed toll processing"*. From the above definition, it is clear that finishing the goods for others against consideration is toll manufacturing and the same is a service falling tariff heading 9830,0000. The appellant in the arguments itself admits that it received grey cloths and finished it by using the material owned by it and after finishing returned the goods to its owners. The reported case of Amie Investment supra is fully applicable in this case. The reported case of Habib Jute Mills supra is not applicable to this case. Both the two forums below have rightly levied tax on the services provided or rendered by the appellant.



9. As far as the pleas of the appellant, that show-cause notice and correspondence mentioned in the order-in-appeal were not served upon it are concerned, we do not find any force in it. The learned AC placed on record the photocopy of courier receipt which shows that the show-cause notice dated 2.06.15 was served upon the appellant on 03.06.15 received by one Shamim. The learned AC also placed on record the courier receipts to show that correspondence addressed to appellant were properly served upon the appellant who have failed to

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reply the same. There is no denial and rebuttal in this regard. In absence of any specific denial and rebuttal the contention of appellant has no merits.

10. As far as plea of appellant, that Sindh Sales Tax is amount to double taxation is concerned, the same is not correct. The Commissioner (Appeals) has dealt with this point in detail with reference to Sales Tax Act, 1990 and Federal Excise Act, 2005 and has rightly held in para 7 of the order-in-appeal that *"The plain reading of the both the above provisions reveals that nowhere in the context the word "service" has been used. But the legislature used and termed the activity as "manufacturer" even if the raw material was not owned by the manufacturer"*. The point of double taxation was dealt with by Honourable Islamabad High Court in Writ Petition No. 2957/2012 and has held as under.

"It is a paramount principle of law, established and settled by the mandate of the dictum of the Superior Courts 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 law, which results in double taxation of the same income, however in the absence of clear provisions stipulating double or multiple levies, the Courts must lean in favour of avoiding double taxation' (Re: P L D 2011 Lahore 402). In view of the aforesaid, it is not disputed that there can be double taxation if the legislature has distinctly and expressly enacted it however in the absence of such enactment where there are general words of taxation then the Court has to interpret the provisions in a manner where they cannot be so interpreted as to tax the subject twice over to the same (Re: Channell, J., in Stevens v. The Durban-Roddeport Gold Mining Co. Ltd. (1909) 5 Tax Cas 402). Accordingly, in the absence of any impediment specifically created in the Constitution of a country or the legislative enactment itself, there is a desirability or need otherwise to avoid such double liability therefore Courts unless there is clear and specific mandate of law in favour of such multiple levies more than once, in construing general statutory provisions must lean in favour of an interpretation to avoid double taxation (Re: Sri Krishna Das vs Town Area Committee (1991 AIR 2096), Chirgaon and Radhakishan Rathi vs Additional Collector, Drug & Or (AIR 1995 SC 1540, JT 1995 (6) SC



166). In the present case the intention of the legislature to tax telecommunication operators twice on interconnection, is not visible from the legislation, in fact it is otherwise, and, therefore, this Court strongly dispels interpretation put forth by the Respondents which warrants imposition of double taxation”.

After 18th amendment in the Constitution the sales tax on services is within the domain of the provinces and the services can be taxed by the provinces. In view of the aforesaid, quotation it cannot be disputed that there can be double taxation if the legislature has distinctly and expressly enacted it, however in the absence of such enactment where there are general words of taxation then the Court has to interpret the provisions in a manner where they cannot be so interpreted as to tax the subject twice. As per the appellant’s own showing the Federation taxed the Manufacturer-cum-exporter and not on services provided on consideration to others. The sales tax on services is levied on the services provided or rendered within or from Sindh. In view of the discussion it is held that the Sindh sales tax on services of toll manufacturing is not double taxation and appellant is liable to pay Sindh Sales Tax on services of toll manufacturing as assessed by the Assessing Officer.

- 11. The appellant is not liable to pay any penalty as there was a contest between the parties regarding the taxability of services rendered and provided by the appellant. The department has also failed to establish mens rea on the part of the appellant. As far as the default surcharge is concerned, we recommend that SRB may kindly consider exempting at least seventy five percent (75%) of the amount of default surcharge as special case by exercising the powers under section 45 of the Sindh Sales Tax on Services Act, 2011. In implementation of the laws and rules, the purpose is not to create hardship but on the other side ensure proper and timely implementation of the laws and rules framed thereunder.

- 12. In view of the above, the order in original and order in appeal are modified to the extent as mentioned in para 11 of this order.



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13. The appeal is disposed of in the above terms.

Razia Sultana Taher
(Razia Sultana Taher)
TECHNICAL MEMBER

Nadeem Azhar Siddiqi
(Justice[®] Nadeem Azhar Siddiqi)
Chairman

Karachi

Dated: 29.06.2016

Copies supplied to:-

1. The Appellant through authorized Representative.
2. The Assistant Commissioner, SRB, Karachi.

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office copy.
- 5) Guard file.

Certified to be True Copy

[Signature]
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

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