

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Spl. STRA 153 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

- 1. For regular hearing
- 2. For hearing of CMA No.1466/2018

15.10.2026

Mr. Inzimam Sharif, advocate for the applicant
Mr. Muhammad Fahad Pirzada, advocate for respondent

Following questions of law are pressed for determination :

- i. Whether on the facts and documents on record the learned Appellate Tribunal as justified in ignoring the fact that the applicant had shifted its business operations from Karachi, Sindh to Lahore Punjab in the year 2010?
- ii. Whether the impugned order failed to appreciate and take into account the fact that the applicant was a non-resident during the period 2011 to 2012 and 2012 to 2013?

Learned counsel for respondent states that these questions are entirely factual in nature and have been determined exhaustively by the appellate forum in the statutory hierarchy. He adverts to paragraphs 9, 10 & 11 of the judgment which reads as follows:

“9.We have heard the learned representative of both sides and perused the record made available before us. The strong emphasis of the appellant has remained on the point the unit of M/s Berger Paints Pakistan Limited was located at D-31, South Avenue, SITE, Karachi, Sindh that after the fire incident in January 2008 at Appellants Associated company i.e. M/s Buxly, the appellant's management physically shifted all its business activities from D-31, South Avenue, SITE, Karachi to 36, Industrial Area, Kot Lakhpat, Lahore, Punjab and the above premises at Karachi Sindh was sold in the year 2010. Furthermore, the appellant submitted copies of Royalty Agreement, License and Technical Assistance Agreement that the same were entered into before the year 2010. The Commissioner (Appeals) has discussed in paragraphs 13 and 16 of the order in appeal that the franchise services have been received in the Province of Sindh.

10. The appellant and the respondent before the Appellate Tribunal remained confined to one issue - according to the appellant that they had transferred the business to Lahore in 2010 and were not existing in Sindh and no economic activity was carried after October, 2010 and further that they established a liaison office in 2014 and during the course of hearing submitted that the reason to

register with SRB was to file appeal against the order in original. Whereas, on the other side, the respondent has taken the stance that the address of X-3, Manghopir Road, SITE appears on the Annual Audited Accounts for the tax years 2011 to 2012, 2012 and 2013 shows the said place as the registered office of the company is situated at X-3, Manghopir Road, SITE, Karachi. We observe that no satisfactory reply has been presented by the appellant on this point who have submitted a copy of the lease agreement with the sister concern showing that the lease agreement was made on 1 October, 2014 between M/s Buxly Paints Limited and M/s Berger Paints Pakistan Limited. That the place bearing No.X-3, Manghopir Road situated at Sindh Industrial Trading Estate Limited Karachi is given on lease to the Appellant. The Assistant Commissioner/ respondent submitted a page from each of the Notes to the Financial Statements (photocopies) of every year from June 2010 to June 2015 showing the situation of the registered office of the company. For the year ended June 30, 2010 wherein it is stated that the registered office of the company is situated at D-31, South Avenue, SITE, Karachi. During the year land and building in Karachi have been sold and the production facilities of the company have been completely transferred to Lahore. Next comes For the year ended 30 June, 2011 wherein it is stated that the registered office of the company is situated at SerD-31, South Avenue, SITE, Karachi. For the year ended 30 June, 2012 - the registered office of the company is situated at X-3, Mangopir Road, SITE, Karachi. For the year ended 30 June, 2013, it is seen the registered office of the company is situated at X-3, Manghopir Road, SITE, Karachi and the principal manufacturing facility of the company is situated at 28 Km Multan Road, Lahore. For the year ended 30 June, 2014 - the registered office of the company is situated at X-3, Manghopir Road, SITE, Karachi and the principal manufacturing facility of the company is shown situated at 28 Km Multan Road, Lahore. For the year ended 30 June, 2015 shows a shift in the registered office of the company and it is situated at 36-Industrial Estate, Kot Lakhpat, Lahore and the principal manufacturing facility of the company is situated at 28 Km Multan Road, Lahore. Thus it is apparent that the Appellant's registered office has continued to remain in Karachi, Sindh after D-31, South Avenue, SITE, Karachi to X-3 Manghopir Road, SITE, Karachi. The appellant's counsel reply that it is an omission on the part the auditor seems to hold no ground and is not found a convincing reply with the record of Financial Statements in the background. It is not out of context to add here that the appellant has not been able to satisfactorily rebut the stance of the respondent that the appellant has continued to carry on its business activities at X-3, Manghopir Road, SITE, Karachi. The said address is shown in the Financial Statements and the Notes to the Consolidated Financial Statement for the year ended 30" June, 2012 to 30th June, 2014. Furthermore, the appellant submitted photocopy of the lease agreement dated 01.10.2014 available on record which shows that Buxly Paints Limited and Berger Paints Limited entered into a lease agreement. The address given is X-3, Manghopir Road, SITE, Karachi, this further confirms the fact that the appellant has remained a resident of Karachi Sindh and the address is same as shown in the Notes to the Financial Statement.

11. The learned Appellant's Advocate also failed to give evidence of payment of franchise fee to the Punjab Revenue Authority (PRA). The presence of the registered office and the execution of several agreements as detailed in paragraph 2 of this order are sufficient to

tax the franchise services in Sindh. However, if the appellant deposits the principal amount of Sindh Sales Tax involved within 30 days of the receipt of the said order, extreme leniency will be shown as a special case and penalty imposed would not be required to be paid by the appellant. In so far, as the amount of default surcharge is concerned, we recommend that SRB may kindly consider exempting at least fifty percent (50%) of the amount of the default surcharge as special case, as it pertains to the initial stages of the coming into force of the new laws by exercising the powers under section 45 of the SToS Act, 2011. In implementation of the Act and Rules, the purpose is not to create hardship but at the same time ensure proper and timely implementation of the laws and rules framed thereunder”

We have heard the respective submissions and are of the view that the factual aspect has been duly considered by the learned Tribunal. No cavil in such regard has been articulated and it is not the case articulated before us that the conclusion could not reasonably have been rested upon the rationale relied. We are in agreement of the learned counsel for respondent that the questions are factual in nature, have been addressed by the learned Tribunal, and no denovo determination of evidence merited in reference jurisdiction. Since no question of law has been articulated before us, reference application stands dismissed.

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, as required per section 63 (5) of the Sindh Sales Tax on Services Act, 2011.

Judge

Judge

Amjad