

IN THE HIGH COURT OF SINDH AT KARACHI

(Extraordinary Reference Jurisdiction)

Special S.T.R.A. No. 74 of 2016

Date	Order with signature of Judge
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Present:

**Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Abdul Maalik Gaddi.**

Priority.

1. For hearing of Main Case.
2. For hearing of Misc. No.2395/2017.

20.02.2019:

Mr. Ameenuddin Ansari, advocate for the applicant.
Mr. Ghulam Hyder Shaikh, advocate for the respondent.

ORDER

1. Through instant Reference Application, applicant has proposed following questions, which according to learned counsel for applicant, are questions of law, arising from the impugned order dated 06.06.2016 passed by the Appellate Tribunal, Sindh Revenue Board [SRB] in Appeal No. AT-234/2015, for opinion of this Court:-

“1. Whether in the absence of proper address and name of the Applicant/registered person, Photostat acknowledgment of Courier reproduced by the Appellate Tribunal in the order is admissible under the Qanoon-e-Shahadat Order, 1984?

2. Whether in the absence of service of OIO through Respondent’s process/notice server under of Section 75 of the Sindh Sales Tax on Services Act, 2011 as per ratio decidendi laid down by the Hon’ble Supreme Court of Pakistan in the case reported as 2001 SCMR 1999, the learned Appellate Tribunal was justified to hold the service of OIO through

substituted service under Section 75 of the Act, read with section 27 of General Clauses Act, 1987 as proper?

3. *Whether the OIO passed in the name of Nasir Khan & Co. not in the name of Nasir Khan & Sons the applicant/registered person, bearing official seal of Assistant Commissioner, SRB and signed by the Deputy Commissioner SRB in Nullity in law?*

4. *Whether in the facts and circumstances K Electric (Pvt.) Ltd. receiving the service prior to registration of Applicant/regd. Person is liable to pay sales tax u/s 9(2) read with section 3(2) of the Sales Tax on Services Act, 2011?"*

2. It has been contended by the learned counsel for the applicant that the applicant is an illiterate person, who is a contractor, against whom, Order-in-Original No. 300/2015 passed by the Deputy Commissioner SRB on 27.05.2015, however, such Order-in-Original was never served upon the applicant in terms of Section 75 of the Sindh Sales Tax on Services Act, 2011 [the Act, 2011], whereafter, the bank account of the applicant was attached without service of Order-in-Original and the applicant was informed by the bank that his account has been attached for the purposes of recovery of the demand created by the respondent/SRB. Per learned counsel, applicant requested for issuance of true copy of the Order-in-Original, which was supplied to applicant, thereafter, petitioner applied for issuance of certified true copy of 10.09.2015 and thereafter, filed the appeal before Commissioner (Appeals) SRB within 30 days'. However, according to learned counsel, the Commissioner (Appeals) has dismissed the appeal of the applicant on the point of limitation inspite of the fact that Commissioner (Appeals) has acknowledged of the Order-in-Original, which was never served in terms of Section 56 of the Act, 2011, whereas, alternate service through courier was also dubious, as according to learned counsel, the name of the applicant was mentioned as Nasir

Khan instead of Nashir Khan & Sons, whereas, on the courier delivery receipt, there was no address mentioned. Per learned counsel, the Commissioner (Appeals) has presumed that since the applicant had the knowledge of the attachment of the bank account, pursuant to Order-in-Original, therefore, the order was duly served upon the applicant, which according to learned counsel, is factually incorrect and otherwise has not treated as a valid service of law. It has been further contended by the learned counsel that the Appellate Tribunal has infact concurred with the findings of the Commissioner (Appeals) and dismissed the appeal of the applicant for being time-barred, have not recorded any finding of the cases. Per learned counsel, the applicant has infact condemned by the appellate forum in terms of Article 10A of the Constitution that a citizen is entitled for fair trial. Per learned counsel, superior Courts always that the cases are to be decided on merits instead of technicalities. In support of his contention, learned counsel for applicant has placed reliance the case of *Mrs. Nargis Latif v. Mrs. Feroz Afaq Ahmed Khan (2001 SCMR 99)*. It has been prayed that impugned order passed by the Appellate Tribunal SRB may be set-aside and the matter may be remanded back with directions to decide the appeal of the applicant afresh on merits, after providing opportunity of being heard.

3. While confronted with hereinabove arguments of the learned counsel for the applicant, learned counsel for respondent could not deny the fact that the defects pointed out by the learned counsel for the applicant, with regard to service of Order-in-Original do exists in the order passed by the Commissioner (Appeals) as well as the Order-in-Original, however, submits that on mere technicalities, the applicant is seeking largamente time period providing to file an appeal. According to learned counsel, the service through courier

upon applicant is a valid service in terms of Section 75 of the Act, 2011.

4. We have heard the learned counsel for the parties, perused the record with their assistance and also examined the provision of Section 75 of the Act, 2011. It will be advantageous to reproduce the provision of Section 75 of the Sindh Sales Tax on Service Act, 2011, which reads as follows:

75. Service of orders and decisions.-- (1) *Subject to this Act, any notice, order or requisition required to be served on an individual for the purposes of this Act shall be treated as properly served on the individual if:*

- (a) *personally served on the individual or, in the case of an individual under a legal disability the agent of the individual;*
- (b) *sent by registered post or courier service to the individual's usual or last known address in Pakistan; or*
- (c) *served on the individual in the manner prescribed for service of a summons under the Code of Civil procedure, 1908 (No. V of 1908).*

(2) *Subject to this Act, any notice order or requisition required to be served on any person, other than an individual to whom sub-section (1) applies, for the purposes of this Act, shall be treated as properly served on the person if:*

- (a) *personally served on the agent of the person;*
- (b) *sent by registered post or courier service to the person's registered office or address for service of notices under this Act in Pakistan or where the person does not have such office or address, the notice is sent by registered post to any office or place of business of the person in Pakistan; or*
- (c) *served on the manner prescribed for service of a summons under the Code of Civil Procedure, 1908 (No.V of 1908).*

(3) *Where an association of persons is dissolved, any notice, order or requisition required to be served under this Act, on the association or a member of the association may be served on any person's who was the principal officer or a member of the association immediately before such dissolution.*

(4) *Where a business stands discontinued any notice order or requisition required to be served under this Act, on the person discontinuing the business may be served on the person personally or on any individual who was the person's agent at the time of discontinuance.*

(5) The validity of any notice issued under this Act or the validity any service of a notice under this Act shall not be called into question after the notice has been complied with in any manner.

(6) Any registered person may indicate, in the manner prescribed in the rules made hereunder, that it wishes to receive all or specific communications, including notifications, orders, assessments and requisitions, from the Board, the Appellate Tribunal or any officer of the SRB electronically.

(7) The Board may, by notification in the official Gazette, direct that all or specific communications, including notifications, orders, assessments and requisitions from the Board, the Appellate Tribunal or any officer of the SRB to a specific registered person or class of registered person shall be made electronically.

(8) For the purposes of sub-section (6) and (7), a registered person shall be considered to have received the electronic communication within seventy two hours of the sending of the electronic communication by the Board, Appellate Tribunal or officer of the SRB.

(9) For the purposes of sub-sections (6), (7) and (8), an electronic communication is a communication sent by email.

5. From perusal of hereinabove provision, it is cleared that any Notice, order or requisition required to be served upon an individual for the purposes of this Act, can be treated as properly served on the individual, if personally serve don individual or in the case of the individual through agent or under a legal disability, whereas, in the instant case, admittedly, the applicant has not been personally served inspite of the fact that the applicant is a registered person and the respondent has all the particular of the applicant, including his address, availability with the respondent. In terms of Para 'b' of sub-section 1 of Section 75 of the Act, 2011, such service can be affected through registered post or courier service to the individual's usual or last known address in Pakistan, however, in the instant case, from perusal of the courier delivery receipt, it transpires that the address of the applicant is missing, therefore, such service upon the applicant becomes doubtful. It is pertinent to note that the applicant was never issued any Show Cause Notice for the purpose of recovery of the disputed amount, whereas, the

bank account of the applicant was directly attached and thereafter, the applicant applied for issuance of certified copy of the order and has filed appeal within statutory period of 30 days', which fact has not been disputed by the learned counsel for respondent and also been acknowledged by the two appellate forums below.

6. Accordingly, keeping in view of hereinabove facts and circumstances, we are inclined to accede to request of the applicant and would remand the matter back to the Appellate Tribunal Sindh Revenue Board to decide the appeal of the applicant, after hearing both the parties'. It is expected that the appeal of the applicant may be decided by the Appellate Tribunal SRB, preferably, within a period of two months' from the date of receipt of this order, which will be communicated by the applicant within seven days'.

Instant Special Sales Tax Reference Application stands disposed of in the above terms alongwith listed application.

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A.S.