

**BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD
KARACHI**

APPEAL NO. AT-192/2015

Central Depository Company Pakistan Limited.....Appellant

Versus

The Commissioner I, SRB and another.....Respondent

Mr. Asif Haroon FCA and Mr. Arqam Ansari ACA for appellant

Ms. Lubna Najmi AC, SRB for Respondent

Date of hearing: 03.11.2015

Date of Order: 12th 16.11.2015

ORDER

Justice (R) Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order-in-appeal No. 156/2015 dated 22.06.2015 passed by the Commissioner (Appeals) in Appeal No. No. 12/2015 confirming Order-in-Original No. 20/2015 dated 12.01.2015 passed by the Assistant Commissioner (Mr. Vickey Dhingra), SRB, Karachi.



1. In short, the facts of the case as stated in Order-in-Original are that the services provided or rendered in respect of "others including services provided or rendered by non-banking finance companies and other financial institutions" are chargeable to the Sindh Sales Tax under section 8 read with Tariff heading No. 9813.8100 of the Second Schedule of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) at the rate of 16% of the value of the service w.e.f. July 01, 2011 and at the rate of 15% with effect from July 01, 2014.

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2. The allegations against the appellant are that despite issuance of notices regarding registration/enrollment with SRB, the appellant failed to get it registered with SRB. The appellant was served with a Show Cause Notice Dated 13.05.2014 for compulsorily registration and imposing penalty on account of non-registration. The appellant filed reply dated 19.05 2014 to the show-cause notice. The main thrust of the reply of the appellant (reproduced in the order-in-original) is as under:

"you should appreciate that tariff heading 9813.8100 referred to in the SCN is a sub-heading of Tariff heading 98.13 "services provided or rendered by banking companies, insurance companies, cooperative financing societies, modarabas, musharikas, leasing companies, foreign exchange dealers, non-banking financial institutions and other persons dealing in any such services. Furthermore tariff headings 9813.1000 to 9813.9000 list out services provided by companies/non-banking financial companies/financial institutions mentioned in the main heading.

On perusal of functions of CDC, you would agree that none of the functions fall within the Main Heading under which subheadings are given."



3. During the pendency of proceedings before the learned AC the appellant got registration on 22.08.2014. Finally after hearing, the Order-in-Original dated 12.01.2015 was passed imposing penalty of Rs.14,122,746/= under Entry No.1 of section 43 of the Act. The learned AC states that appellant has received consideration of Rs.1,765,343,287/= and SST works out to be Rs.282,454,926/= being 16% of the consideration and worked out the penalty on the basis of 5% of the SST payable.

4. The learned Assistant Commissioner in para 06.9 of his order held as under:

"Therefore, it is crystal clear that M/s CDC is engaged in providing or rendering such services as provided or rendered by non-banking finance companies and, therefore are chargeable to the SST."

5. The Respondent challenged the Order-in-Original by way of filing of Appeal No.156/2015 before the Commissioner (Appeals)

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who dismissed the Appeal, vide Order dated, 22.06.2015 confirming the Order-in-original. The learned Commissioner (Appeals) in paragraph 25 of the Order-in-Appeal has held as under:

".....The first core contention of the learned appellant provides that, they are only depository in Pakistan and handle the electronic settlement of transaction carried out at all three stock exchanges of the Country. Moreover, they are not providing any of the services enlisted within ambit of tariff heading 9813.8100. Accordingly, it is decided that, the plain perusal of OIO specifically para 04 to para 06.10 ibidium provide strong ground that, the services provided by the learned appellant fall within the ambit of tariff heading 9813.8100. The learned Respondent has not only justifiably established the rendition of services by the learned appellant but has sufficiently defended his contention during the appeal proceedings. His logic and rationality, in support of his contention and duly cited supra has persuaded this forum to firm their judgment and arrive on the finality that, the learned appellant is indeed found engaged in rendering and providing the taxable services reflected against the tariff activity code of 9813.8100. Therefore, in short, the rendition of taxable services by the learned appellant is vivid and vivacious and they cannot redeem themselves from the ambit of the taxability of services on any plea or pretext."

The learned Commissioner (Appeals) in para 26 of the order-in-appeal further held as under:

".....It is the result of the sweet will and sweet interpretation of the learned appellant that, despite rendering taxable services falling under the ambit of 9813.8100 and also receiving huge consideration thereto, the learned appellant at their own construed that, they do not fall within the tariff heading 9813.8100. In fact, the perusal of the detailed dialogue and academic deliberations, rebuttals, counter rebuttals, rejoinders and counter rejoinders, and duly reflected and cited supra, surface a clear cut impression that much of the material is forwarded as a token qualifying as tit for tat or a storm in the tea cup and that is not less in any case then much ado about nothing....."


6. Mr. Asif Haroon the learned representative of the appellant states that the appellant is a Central Depository Company and is neither come under Tariff heading 98.13 nor is providing or rendering any services mentioned in the Second Schedule under Tariff heading 98.13. He submits that both the forums below



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passed the orders on wrong notion that the services provided by the appellant are in the nature of those provided by Non-Banking Finance Company (NBFC) merely on the basis that the as per their opinion the trusteeship/custodial services provided by appellant resemble to those provided by NBFC. He then submits that CDC is not a NBFC because NBFC is a defined/license entity and SECP in its letter dated June 5, 2014 addressed to AC Vickey Dhingra on his request (suppressed by the Said AC) confirmed that CDC is not a NBFC and that for acting as NBFC one must have license from SECP to act as such. He then submits that share transfer service provided by appellant was brought to tax net w.e.f. July 1, 2014 under Tariff heading 9805.9000 (share transfer agent) and Tariff heading 9819.9500 (services provided or rendered by a registrar to an issue) and its other services including depository services, investor account services and trustee and custodial services have been made taxable w.e.f. July, 2015 by enlarging the definition of the term "Share Transfer Agent" in section 2(79A). He then submits that both the forums below wrongly construed that the appellant is covered by the expression "other persons dealing in any such service" used in the main tariff heading 98.13 and "others, including the services provided or rendered by non-banking finance companies, modaraba and musharika companies and other financial institutions" used in the sub-sub-heading 9813.8100 added by ordinance effective from 1st November, 2011. He then submits that the main heading is not relevant for taxing a service if sub-headings and sub-sub-headings are given under main heading and "others" in a sub-sub heading are subordinate to the sub-heading. The learned representative of the appellant also challenged imposing of penalty under section 43 Item No. 1 amounting to Rs.14,122,746/= and default surcharge on the ground that there was no willful or intentional default on the part of the appellant and that the respondent failed to prove mens rea, willful non-compliance of statutory provisions of law and malafide on the part of the appellant. The learned representative of the appellant heavily relied upon the reported case of M/s Citi Bank

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NA versus Commissioner Inland Revenue and others 2014 PTD 284 and submits that the reported judgment is the complete reply of the issues involved in this case.

7. The learned AC Ms. Lubna Najmi for the Respondent supported both orders. She submits that the appellant being CDC is engaged in providing services of depository of securities, shares transfer agent, registrar to an issue as well as trustee ship and custodial-ship services in relation to open-end funds and close-ended schemes managed by non-banking finance companies under the Non-Banking Finance Companies and Notified Entities Regulations, 2008. She then submits that services provided by share transfer agents under tariff heading 9805.9000 and registrar to an issue under tariff heading 9819.9500 were made part of 2nd Schedule to the Act with effect from 1st July, 2014, however trusteeship and custodial services have been made taxable under tariff heading 9813.8100 w.e.f. November, 2011. She further submits that the appellant is not a NBFC, but this fact is not sufficient to conclude that its services (excluding share registrar services) were not subject to Sindh Sales Tax during the tax periods assessed vide order-in-original dated 3rd March, 2015. She pointed out that the appellant obtained certificate of registration to act as a trustee of open end and closed end schemes under Regulation 40B of NBFC Regulations, 2008. She then submits that tariff heading 98.13 describe the services provided by banking companies, insurance companies, cooperative financing societies, modaraba, musharika, leasing companies, foreign exchange dealers, non-banking financial institutions and other persons dealings in any such service and the words "other persons" and "dealing in any such services" make it evident that the main tariff heading 98.13 does not only include the above mentioned specific service providers but all other persons who provide similar services. She then points out that tariff heading 9813.8100 applied to all persons who provide services similar to those



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rendered by non-banking financial institutions. She supported the order of imposing penalty of Rs. 14,122,746/=.

We have heard Mr. Asif Haroon the learned Representative of the Appellant, Ms. Lubna Najmi, the learned Ac, SRB, perused the record made available before us and the comments and written synopsis filed by the learned representatives of the parties.

8. It is not disputed by any of the parties that appellant is registered as a CDC Company and providing services as mentioned in clause 1, 2, 3 and 4 of its Memorandum of Association which includes to act as (i) central depository for securities (ii) to act as custodian, agents trustee, representative, advisors, managers or nominee of member/brokers and agent of stock exchanges and (iii) to act as registrar of securities. It is also not disputed that appellant is not a non-banking financial company as admitted by the respondent in the comments filed on 10.11.2015 and confirmed by SECP in its letter addressed to Mr. Vicky Dhirga, which was for obvious reasons suppressed by him to wrongly tax the appellant.



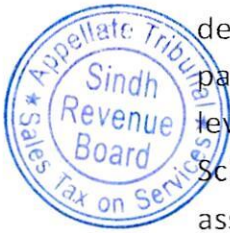
9. As per the Appellant the Share Transfer Services were made taxable with effect from July 1, 2014 under tariff heading 9805.9500 and its other services (including depository services, investor account services and trustee and custodial services) have been made taxable with effect from July 1, 2015 by enlarging the definition of the term "Share Transfer Agent" in section 2 (79) of the Act. Further contention of the appellant is that tariff heading 9819.9500 (Services provided or rendered by a registrar to issue) was brought to tax net w.e.f. 1st July, 2014 and after obtaining voluntarily registration the appellant is paying tax and regarding tariff heading 9805.9000 (Share Transfer Agents) the appellant submit that this service was brought to tax net w.e.f. 1st July, 2015 and the appellant is liable to tax on this services w.e.f. 1st July, 2015. The contention of the learned AC is that services provided by appellant as Share Transfer Agents falls under tariff heading 9805.9000 and registrar to an issue under tariff heading 9819.9500 were made

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part of 2nd Schedule to the Act with effect from 1st July, 2014, however trusteeship and custodial services have been taxable under tariff heading 9813.8100 (others) w.e.f. November 2011. She further submits that said tariff heading 9813.8100 was substituted by an ordinance of 2011 effective from November, 2011 and the tax was rightly levied on these services.

10. Both the forums on the presumption that the appellant is a non-banking finance company and is providing or rendering services similar to services provides or renders by non-banking finance companies is liable to be registered and imposed penalty without considering that as and when the services provided or rendered by the appellant it got voluntarily registration and started paying tax.

11. Both the forums below only considered the consideration received by the appellant reflected in its financial statement. Neither the forums below have properly determine the nature of services nor the value of services rendered or provided by the appellant and Sindh sales tax was levied on the revenue/earnings of the appellant. The department has nothing to do with the revenue/earnings of a tax payer. The SST cannot be levied on revenue/earnings and it can only be levied on the value of services provided or rendered listed in the 2nd Schedule of the Act. The tax cannot be levied on presumption or assumption. The tax cannot also be levied treating or presuming that the appellant is providing or rendering services of non-banking financial company.



12. We have also dealt with the issues and controversies involved in this case in connected Appeal No. AT-191/2015 between the same parties in respect of same tax periods i.e. July 2011 to June 2013 in detail and our findings are as under:-

"The sales tax can only be levied if the service is specified in the 2nd Schedule to the Act read with the definition clause of the Act. Admittedly the services provided by the appellant i.e. Share Transfer Agent was added in the definition clause vide 2(79A) of the Act effective from 7th July, 2014 and was enlarged effective from 1st July, 2015. Some of the services which the appellant were provided and rendered can be taxed effective from 07 July, 2014 and some from 1st July, 2015. This case pertains to the tax periods from

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June, 2011 to July, 2013 when the services provided or rendered by the appellant was not part of the tax net and tax cannot be levied treating the appellant as non-banking financial company."

(Note) The Order rendered by us in connected Appeal No. AT-191/2015 may be treated as part and parcel of this order.)

13. In view of the above we are satisfied that both the Order-in-Original and Order-in-Appeal are suffering from legal infirmities and are not sustainable in law. For the tax periods from July, 2011 to June, 2013 the appellant neither provided or rendered any taxable services nor was liable to be registered as such there would be no question of imposing penalty. Consequently the Order-in-Original and Order-in-Appeal are set aside and the appeal is allowed.

14. The appeal is disposed of as above.



(Razia Sultana Taher)
Siddiqi) TECHNICAL MEMBER

Karachi

(Justice Nadeem Azhar)
Chairman

Dated: 11.01.2016

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.

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Ms. Razia Sultana Taher, Member (Technical)- I have the privilege to record my finding, as in the paragraphs followings, while differing with the findings, observations and decision of the learned Member (Judicial)/ Chairman.

2. In the case of appeal against the Commissioner (Appeals), SRB's Order-in-Appeal No. 156/2015 relating to show cause Notice No. SRB-COM-I/AC-III/NBFC/CDC/769/2014 dated 13.05.2014 and the Order-in-Order No.20/2015 dated 12.01.2015, the issue involved is non-compliance of the provisions relating to registration and the consequent impositions of penalty of Rs.14,122,746/- (being 5% of the amount of SST of Rs.282,454,926/-) on M/s Central Depository Company (Pakistan) Ltd (hereinafter called "M/s CDC").

3. In the case of appeal against the Commissioner (Appeals), SRB's Order-in-Appeal No.157/2015 relating to show cause notice No.SRB-COM-I/AC-III/NBFC/CDC/18072014 dated 12.01.2014 and Order-in-Original No.113/2015 03.03.2015, the issue involved is whether M/s CDC are liable to pay any sales tax under the main tariff heading 98.13 or its sub-heading 9813.8100 the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter called "the 2011 Act") on the services provided or rendered by them during the period from July, 2011 to June, 2013, and, if so, whether the Sindh Sales tax (hereinafter called "SST") liability of Rs.282,454,926/- for the above said tax period is correct.

Although the registration profile of M/s CDC shows that they got themselves registered on 22.08.2014, I will take the second case (i.e. the appeal against Commissioner Appeals' Order-in-Appeal No.157/2015) first mainly because the question of registration under section 24 of the 2011-Act is dependent on the taxability of the services under the Second Schedule to the 2011-Act.

5. For this purpose, I find it necessary to reproduce, as hereinafter, the tariff heading 98.13, sub-heading 9813.8100 and the descriptions of the taxable services mentioned there against in the Second Schedule to the Sindh Sales Tax on Services Act, 2011.

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- "98.13 Service provided or rendered by banking companies, insurance companies, cooperative financing societies, modarabas, musharikas, leasing companies, foreign exchange dealers, non-banking financial institutions and other persons dealing in any such services"
- 9813.8100 other services not specified elsewhere Issuance, processing and operation of credit and debit cards".

6. Section 2(28) (c) of the 2011-Act specifies "a non-banking finance company (NBFC) and the notified entities as specified in section 282A of the Companies Ordinance, 1984 (Ordinance No. XLVII of 1984), read with the non-banking Finance Companies (Establishment and Regulation) Rules, 2003" to be a "company" and, therefore, to be covered by the terminology "person" within the meaning of section 2(63) (c) of the said 2011-Act. Section 282A of the Companies Ordinance, 1984, defines the services of a NBFC to include various services as specified therein, including the service of investment finance services and, investment advisory services. Again clauses (viii), (xvii) and (xlv) of rule 2(1) of the NBFCs (Establishment & Regulations) Rules, 2003, need attention which are reproduced as hereunder:-

- (vii) "central depository company" means central depository as defined under the Securities and Exchange Ordinance, 1969 (XVII of 1969).
- (xvii) "custodian" includes a bank licensed under the Banking Companies Ordinance, 1962 (LVII of 1962) or a trust company which is subsidiary of such bank or a central depository company approved by the Commission or NBFC carrying out investment finance services provided it has been approved by the Commission to act as custodian or such other company as may be approved by the Commission to act as custodian.
- (xlv) "trustee" includes a bank licensed under the Banking companies Ordinance, 1962 (LVII of 1962) or a trust company which is a subsidiary of such a bank or a central depository company approved by the Commission or a NBFC carrying out investment finance services provided it has been approved by the

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Commission to act as trustee for such other company or trust as may be approved by the Commission to act as trustee.

7. The aforesaid provisions of clauses (xvii) and (xlv) of rule 2(1) of the NBFCs (Establishment & Regulations) Rules, make it abundantly clear that the services of custodianship and trusteeship as provided by M/s CDC are similar to the custodianship and trusteeship services provided by any banking company or by NBFC and, therefore, these services of M/s CDC are covered by the terminology "other persons dealing in any such services" as mentioned against tariff heading 98.13 and the also covered by the terminology of services specified as "others, including the services provided or rendered by non-banking finance companies, modaraba and musharika companies and other financial institutions" against the tariff sub-heading 9813.8100. In the SCN No.SRB-COM-I/AC-III/NBFC/CDC/1807/2014 dated 12th January, 2014, the Assistant Commissioner had quoted the Note 1 of the Financial Statement of M/s CDC which stated that they are engaged in the businesses of depository of securities, opener of securities accounts and registrar to the issuer of securities and further that they also act as **trustee** of various open-end fund and closed-end schemes under the Non-Banking Finance Corporation and Notified Entities Regulations, 2008, and also provide **custodialship** to close-end fund formed under he said Regulations.

8. For the reasons specified in the foregoing paragraphs, I have no doubt that the trusteeship services and custodianship services provided or rendered by M/s CDC are similar to some of those services as are provided or rendered by any banking company or by any NBFC. In its judgment in the Civil Appeal No. 911 of 2015 (Habib Safe Deposit Vault Pvt. Ltd *versus* the Province of Sindh through Secretary Finance and other), the Honourable Supreme Court of Pakistan held as follows:-

"7. In our opinion, it is not without significance that tariff heading 98.13, unlike some other tariff heading in the Second Schedule, stipules a rate of tax. The appellant's learned counsel's contention that, confusion would occur if the said tariff heading and any tariff subheading prescribed different tax rates, is not correct, because, if a particular rate of tax is prescribed under a specific subheading, which is

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different from the general rate of tax mentioned in the tariff heading, the rate of tax prescribed in the subheading would apply on the principle that the specific excludes the general; reference in this regard may be made to cases of State v zia-ur-Rahman (PLD 1973 Supreme Court 49, relevant at page 89W) and Neimat Ali Gooraya v Jaffar Abbas Inspector/Sargent Traffic (1996 SCMR 826, relevant at page 833B).

8. The next question which requires our consideration is whether the appellant is required to pay sales tax on the provision of safe deposit lockers (even if it is not a banking company) under the tariff heading 98.13 which also to "other persons". The learned counsel for the appellant could not advance any argument that could possibly exclude the appellant from other persons, nor can we think of a reason to do so. Section 3 of the Act sets out what is a "taxable service" and section 5 explains how the same is valued. Section 8 of the Act is the charging section and states that sales tax is levied, "on the value of taxable service at the rate specified in the Schedule in which the taxable service is listed."

9. Since the appellant undoubtedly comes within the phrase "other persons" therefore the next question to be determined is whether it provides "services" in terms of the Act. The definition of 'services', and its further explanation, is contained in clause (79) of section 2 of the Act, as under:

"service" or "services" means anything which is not goods or providing of which is not a supply of goods and shall include but not limited to the services listed in the First Schedule of this Act.

Explanation: A service shall remain and continue to be treated as service regardless whether or not the providing thereof involves any use, supply or consumption of any goods either as an essential or as an incidental aspect of such providing of service.

Safe deposit locker and safe vaults are mentioned in subheading 9813.4900 and 9813.4910 respectively of the abovementioned First Schedule; however, even if the same were not mentioned therein it would not in itself exclude a person since the



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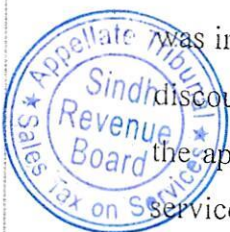
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definition proceeds to state – but not limited to the services listed in the First Schedule.

10. The appellant comes within the phrase- “other persons” as mentioned in tariff heading 98.13 and provides services of safe deposit lockers/safe vault to its customers. The said tariff heading 98.13 also prescribes a rate of tax (15%). Therefore, the appellant is liable to pay sales tax at such rate on the services that it provides.”

9. It appears that the aforesaid judgment of the Honourable Supreme Court has escaped the attention of the learned Member (Judicial) Chairman and he has relied heavily on Sindh High Court’s judgment in a case of Federal Excise Reference Application No D-152 of 2012 decided on 30th October, 2013 (2014 PTD 284). Firstly, the said judgment of the Honourable High Court is in relation to Federal Excise Act, 2005, while the case under appeal before us relates to Sindh Sales Tax on Services Act, 2011. Secondly, the said reference application was in relation to liability of FED on transactions of (a) insurance commission, (b) merchant discount, and (c) speedy cash home remittance by the appellant bank in that case while, in the appeal case before us, the point of determination is whether the services (similar to the services of a banking company or NBFC or a financial institutions) as are provided or rendered by “other persons” shall attract Sindh sales tax under tariff heading 98.13 or not. In my opinion, there is no justification to rely on the Honourable High Court’s judgment in the Federal Excise Reference Application case No. D-152 of 2012 (2014 PTD 284) in the presence of a direct precedent available as the Honourable Supreme Court’s judgment in Civil Appeal No. 911 of 2015. Accordingly, I hold that the appellant (CDC)’s services, as involved in this case under appeal, were liable to Sindh sales tax under tariff heading 98.13 during the tax periods of FY 2011-12 and 2012-13 (i.e. the tax periods involved in the case under appeal). The appeal against Commissioner (Appeals)’s Order-in-Appeal No.157/2015 relating to Order-in-Original No. 113/2015 is accordingly rejected.

10. Now, I shall turn to the legislative amendment made in section 2(79A) of the 2011-Act through the Sindh Finance Act, 2015. Firstly, section 2(79A) did not exist in the statute



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book during FY 2011-12 or 2012-13 (i.e. the periods involved in this case) as it was first inserted through the Sindh Finance Act, 2014, and was later substituted, (as it exists now) through the Sindh Finance Act, 2015. While I have no doubt that these insertion and substitution of clause (79A) in section 2 of the 2011-Act do not affect the tax liability of the services of the appellant M/s CDC during the tax periods (of FY 2011-12 and 2012-13) as are involved in this case, I am un-ambiguously clear that these services (provided or rendered during the tax periods of FY 2011-12 and 2012-13, as are involved in this case) are covered by the description against tariff heading 98.13 as it existed during the said period and it will be only from 01.07.2015 that these CDC services shall pay Sindh sales tax under tariff heading 9805.9000. The said amendment made in section 2(79A) does not apply retrospectively but simply changes the tariff heading of this service, effective from the date of such insertion and substitution from the date of said 2(79A), from tariff heading 98.13 to tariff heading 9805.9000.

11. As regards the issue of reliance on SECP's Certificate, this is out of place. M/s CDC are registered under the Companies Ordinance, 1984, and have been providing or rendering the trusteeship services and custodialship services, (as are also provided or rendered by banking companies, NBFCs, and financial institutions) in terms of the NBFCs, (Establishment and regulation) Rules, 2003, and the NBFCs and Notified Entities Regulations, 2008. SECP and any other organization or their opinion can be considered on merits but cannot make the provisions of Sindh Sales Tax on Services Act, 2011, subservient to their opinions or their licensing/registration requirements. As regard the learned Member (Judicial)/Chairman's observations about the conduct of AC Mr. Vicky Dhingra in this regard, I do not find myself in agreement to his observations/remarks. There is no evidence that Mr. Vicky Dhingra suppressed the SECP letter and that too deliberately. We, as Appellate Tribunal, have not provided him the opportunity to explain and defend his act. However, it shall be open to the Chairman, SRB, to satisfy for himself, if he so desires, whether the act of AC Mr. Vicky Dhingra in this regard was an act of suppression of the related documents, whether deliberately or otherwise, and, if so, whether it calls for any disciplinary action in terms of SRB's rules and policies in this regard.



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Lastly, I find that m/s CDC was not compulsorily registered by SRB. M/s CDC voluntarily registered with SRB on 22.08.2014 i.e. well before the date of Order-in-Original No.20/2015 dated 12.01.2015 and also well before the determination / assessment of tax liability under Order-in-Original No.113/2015 dated 03.03.2015. In such a situation, the imposition of penalty (for the act of non-registration) equal to 5% of the amount of SST (not yet assessed/adjudged) is neither proper nor lawful. I, accordingly, reduce the penalty of Rs.14,22,746/-, imposed on M/s CDC under Order-in-Original No.20/2015, to an amount of Rs.10,000/-.

The appeal case No.AT191/2015 and No.AT192/2015 are disposed of accordingly.

Razia Sultana Taher
(RAZIA SULTANA TAHER)
MEMBER (TECHNICAL)
09/02/16

ORDER OF THE TRIBUNAL

There appears difference of opinion between the Chairman and the Technical Member of the Appellate Tribunal.

The Chairman is of the opinion that the case pertains to the tax periods from July 2011, to June 2013, when the services provided or rendered by the appellant was not part of tax net and tax cannot be levied treating the appellant as non-banking financial company.

The Technical Member is of the opinion that the services provided or rendered by the appellant during the tax periods of 2011-12 and 2012-13 are covered by the tariff heading 98.13 as it existed during the said tax periods and are liable to Sindh Sales Tax.

The matter is referred to the Third learned Member of the Tribunal for hearing the following point:-



1. Whether or not the services provided or rendered by the appellant during the tax periods from July, 2011 to June, 2013 come within ambit of tariff heading 98.13?

Presently there is no third Member of the Appellate Tribunal is available. The matter will be placed before him as and when the appointment is made.

Copy of the Order may be issued to the parties.

Razia Sultana Taher
Razia Sultana Taher
Member

M. Nadeem Azhar Siddiqi
Justice (retired) Nadeem Azhar Siddiqi
Chairman

Karachi

Dated: 15.02.2016

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Appeal no: AT-191/2015

Central Depository Company Pakistan LtdAppellant

VERSUS

The Commissioner-I, SRB and another.....Respondent

Mr. Asif Haroon FCA.....For Appellant

Mr. Tariq Ali Sheikh AC. S.R.B.....For Respondent

Appeal no: AT-192/2015

Central Depository Company Pakistan LtdAppellant

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The Commissioner-I, SRB and another.....Respondent

Mr. Asif Haroon FCA.....For Appellant

Mr. Tariq Ali Sheikh AC. S.R.B.....For Respondent

ORDER

Muhammad Ashfaq Balouch:

I have the Honor to go through the opinion rendered in appeals bearing A.T. No 191/2015 and A.T. No 192/2015 Central Deposit Pakistan Ltd v/s Commissioner SRB of the Honorable Chairman and of my Learned Technical Member.

I have heard Mr. Asif Haroon FCA for the appellant, Mr. Tariq Ali Sheikh AC. S.R.B and perused the record.

With profound respect of Learned Technical Member, I do not agree with the views expressed by Learned Technical member.

Reasons:-

It was the case of the appellant that appellant is registered as a CDC company, involved in activity of (i), Act as registrar of security, act as custodian, agents, trustee, representative, advisor, manager, nominee of member/broker, agent of Stock Exchange and Central depository for securities, not rendering Services as NBFC. This fact was



confirmed by the SCEP vide letter dated June 5, 2014 addressed to Mr. Vicky Dhangra A.C S.R.B.

The other contention of appellant was that share transfer services were made taxable from July 1, 2014 under Tariff Heading 9805.9500 and its other services were brought into tax net from July 1, 2015, when the definition of term "Share Transfer Agent in section 2(79) of Act was enlarged.

To proceed further I have the benefits to reproduce the definition of term "share Transfer Agent as mentioned in Sec 2(79-A) of SST Act".

"(79A) Share Transfer Agent means a person who maintains the record of holders of securities, and deals with all matters connected with the transfer or redemption of securities or activities incidental thereto".

It is also fact that above provision was amended in July 2015 and by using word include "the definition was enlarged; it's now read as under.

"(79A) share transfer agent includes a person known as share depository agent and also includes persons providing or rendering transfer or redemption or depository services including the services provided through manual or electronic book entry system used to record and maintain record of holders of securities, and also of the securities and derivatives (including investor accounts services, trustee or custodial services, share registrar services and similar, allied or connected services)".

The perusal of OIO shows that Assessing Officer taxed the appellant under tariff heading 9813.8100 (others). Observing that appellant is rendering the service provided by NBFC. But Assessing



Officer has ignored the fact that appellant was registered for rendering as Central Depository for Securities and not as a NBFC as treated by the Assessing Officer. As it is mentioned supra that SECP which is Regulatory Authority of NBFC, already informed Assessing Officer that appellant is not a NBFC. The appellant cannot Act NBFC without proper license of SECP

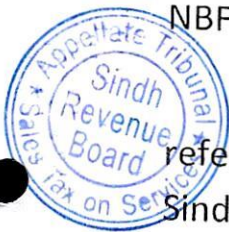
It is worthwhile to mention here that the appellant was taxed under tariff heading 9813.8100 which is reproduced here as under:-

"Others, including the services provided or rendered by non-banking finance companies, Modarba and Musharqa companies and other financial institutions"

The perusal of above tariff. shows that only above referred institution can be taxed under this tariff heading, as the appellant does not come within the ambit of institution specified in above definition. Further the appellant does not fulfill the condition specified for NBFC so also not claimed to be a NBFC. The SECP the regularity authority of NBFC informed the Assessing Officer that appellant is not NBFC.

The Honorable Chairman in Para 16 and 17 of his order has referred the case of Citi bank 2014 PTD 284 of Honorable High Court of Sindh, which is fully applicable in the facts and circumstances of case in hand.

In view of above when it is settled position that a tax can be levied only when the service is specified in 2nd schedule, coupled with the definition clause. It is also admitted position that appellant provided or rendered the services of "share Transfer Agent" which were made part of definition of Clause 2(79 A) of Act from 7th July 2014, it was further enlarged from 1st July 2015. As the tax period involved in present case is from July 2011 to June 2013, when services provided by the appellant was not part of taxable service.



Therefore, I agree with the findings of Honorable Chairman recorded in A.T. 191/2015, Central Depository Company Pakistan Ltd v/s Commissioner SRB and A.T.192/2015 Central Depository Company Ltd v/s Commissioner-I SRB that appellant cannot be taxed during this tax period as Non-Banking financial Company.



This order is submitted to Hon'ble Chairman, AT-SRB for disposal of appeals.

Date: 28-02-2018

A handwritten signature in black ink, appearing to read 'Muhammad Ashfaq Balouch'.

(Muhammad Ashfaq Balouch)
Judicial Member

ORDER OF THE TRIBUNAL

There was a difference of opinion between the Chairman and the Technical Member of the Appellate Tribunal.

The Chairman was of the opinion that the case pertains to the tax periods from July 2011, to June 2013, when the services provided or rendered by the appellant was not part of tax net and tax cannot be levied treating the appellant as non-banking financial company.

The Technical Member was of the opinion that the services provided or rendered by the appellant during the tax periods of 2011-12 and 2012-13 are covered by the tariff heading 98.13 as it existed during the said tax periods and are liable to Sindh Sales Tax.

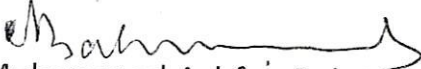
The matter was referred to the learned Judicial Member of the Tribunal for hearing the following point:-

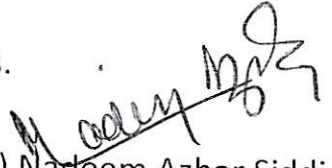
Whether or not the services provided or rendered by the appellant during the tax periods from July, 2011 to June, 2013 come within ambit of tariff heading 98.13?

The learned Judicial Member after hearing the parties concluded that the appellant cannot be taxed during the tax periods as Non-Banking Financial Company.

The appeal is allowed.

Copy of the Order may be issued to the parties.


Muhammad Ashfaq Balouch
Judicial Member


Justice (retired) Nadeem Azhar Siddiqi
Chairman

Karachi

Dated: 28.02.2018

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD