

BEFORE THE APPELATE TRIBUNAL SINDH REVENUE BOARD

APPEAL NO. AT-212/2015

M/S Noarsh Shipping Services (Pvt.) Limited Appellant

Versus

1/ Commissioner (Appeals), SRB, Karachi
2/ Deputy Commissioner (Unit-15), SRB, Karachi
3/ Assistant Commissioner (Unit-13), SRB, Karachi Respondents

For the Appellant

Mr. Mirza Haider Hussain Baig, FCA and
Mr. Masood Ahmed Baig, Advocate

For the Respondent

Syed Rizwan Ali, D.C. (Unit-15) SRB, Karachi

Date of hearing 11.11.2015

Date of Order 03.12.2015

ORDER

Razia Sultana Taher An appeal has been filed by the Appellant challenging Order in Appeal No:174/2015 dated 15.09.2015 passed by the Commissioner (Appeals) confirming the Order-in-Original No. 180/2015 dated 30.03.2015 passed by the Assistant Commissioner, SRB (Unit-13) except to the extent of penalties as detailed in paragraph 30 of the Order-in-Appeal.

In brief, facts of the case as mentioned in the Order-in-Original are that the Appellant is engaged in providing and rendering taxable services of ship management services falling under tariff heading 9805-2100 of the Second Schedule to the Sindh Sales Tax on Services Act 2011 (hereinafter referred to as SSToS Act 2011), which were chargeable to Sales tax @ 16% from 1st July, 2011 to till 30th June, 2014 and are liable to Sindh Sales tax @ 15% from July, 2014 to date.

3/ The allegation against the Appellant was that during examination of the Annual Audited Financial Accounts, it revealed that revenue had been generated for providing or rendering taxable services of ship management which involved the Sindh Sales tax Rs.3,025,130/- during the tax period from July, 2011 to June, 2012 and Rs.3,411,814/- during the tax period from July, 2012 to June, 2013. Further, examination of the tax profile showed



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that the appellant have failed to e-file the Sindh Sales tax returns pertaining to the tax period from July, 2011 to June, 2012 and e-filed 'Null' Sindh Sales tax returns for the period from July, 2012 to June, 2013.

4/ The concerned Assistant Commissioner in the Order-in-Original No.180/2015 observed and concluded that the appellant earned service revenue of Rs.40,230,902/- during the tax periods from July, 2011 to June, 2013 against the services of ship management, which involved the Sindh Sales tax of Rs.6,436,944/- and was thus liable to pay the same alongwith default surcharge under section 44 of the SSToS Act-2011 (to be calculated at the time of actual payment) and to e-file true and correct Sindh Sales tax returns pertaining to the tax periods from July, 2011 to June, 2013. The appellant was also ordered to pay an amount of Rs.42,483,830/- as penalties.

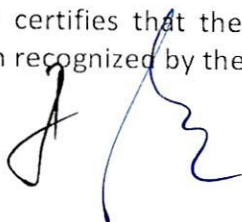
5/ The Commissioner (Appeals) in his order at paragraph 9 explicitly detailed the activities carried by the Appellant in the entire process - there is no activity shown to have taken place outside Pakistan and the shipping line reimburses the expenses borne by the Appellant.

6/ Paragraph 10 of the Order-in-Appeal states that "an agreement executed on 26th June, 2008 between a foreign agent M/S SCINICARIELLO Ship Management S.p.A, Naples and the Appellant. The agreement is such that it is sent duly signed by M/S SCINICARIELLO Shipping Agent S.p.A, Naples and upon receipt the same has been signed by the Appellant". The said agreement at the very outset, says that the Appellant has been appointed "Manning Agent in Pakistan" to act on behalf of SCINIRARIELLO in the capacities contained in the various clauses. The very 1st clause reads as "recruit" Pakistani seamen in accordance to their requirements. The two clauses are basis of the Agreement, which highlight as to what the Appellant is required to do under the Agreement. Here, a question arises as to the consideration against the services of manning agent? A 'fee' is received per month and per person, which is the consideration against services.

At paragraph 14 and 15 of the Order-in-Appeal it is stated that the License has been issued to the Appellant under section 119 of the Ordinance.

"119. Manning agent. (1) No person shall act in Pakistan as a manning agent unless it is a company licensed as a manning agent with the Federal Government. The Federal Government may, by notification in the official Gazette, make rules specifying conditions of the manning agent".

The title of the License says "License to Engage or Supply Seafarers", so the Appellant can either engage the crew for others and (or) supply the same, as per the agreed terms. "The License further certifies that the "Recruitment and Placement Systems" of the Appellant Company has been recognized by the competent authority".



It is further stated that the Appellant as per section 119, read with Agreement with the foreign Ship Management Company M/S SCINICARIELLO Naples Shipping Agent S.p.A is a manning agent of the Company to act in Pakistan only. In view of the aforementioned facts and circumstances, the activity is not and cannot be categorized as an 'export of service' in terms of 'supply of manpower' but is that of a 'manning agent' for "engaging" or "providing" recruitment and ancillary services.

8/ The Order-in-Appeal further stated that "the entry at tariff heading 9805.21000 says "ship management services". Since no definition in the Act was available during the relevant period therefore, such description is required to be seen in common parlance meaning. Manning is an integral part of the ship management hence it cannot be excluded from Ship Management. A website named "Marine Incite" available online at www.marineinsight.com. The said company, on its webpage has highlighted services that a ship management company provides and at number 2 of the listed services appears "the ship management company should provide adequate crew for manning the ship". Link of website is given under, for ease of reference:-

"http://www.marineinsight.com/misc/maritime-law/what-is-ship-management/"

The said post was placed on the website on December, 6, 2010 i.e. well ahead of the Act, 2011, it is an independent source and provides a list of services that a ship management company provides. Thus inclusion of such services in Rule 40C or the definition did not intend to broaden / widen the scope of ship management services, but in its very nature clarificatory. Thus Rule 40C of the Rules or section 2(82) of the SSToS Act-2011 do not affect the taxability of the activity as the same has undoubtedly remained taxable since July, 2011.

Paragraphs 20, 22 and 23 of the Order-in-Appeal explained that it is not an export of service or supply of manpower at foreign country. The appellant got voluntary Registration. A Notifications No. 7(1)2010-Misc-Sh-II (PE-I) was issued on 26th September, 2012, wherein, the Ministry of Port and Shipping had asked all the Ship Management Companies dealing with the engagement and supply of crew to e-register with the SRB. The said Notifications draws no distinction as to services provided to a foreign ship or a Pakistani ship. The Appellant at no point challenged the Notifications of the Ministry of Port and Shipping nor has challenged the provisions of the Act-2011 or the Rule 40C in any court of law. Such act speaks of default being willful with existence of mens rea. Here "there is no question of commencement or the termination of the activity outside Sindh. The Appellant being a Company meant and established for shipping services is a "ship management company" and activities as such remained "management services" as manning agent in Pakistan in their kind and nature from the very inception. It is also established that such services are being received by the foreign shipping lines / management companies at Karachi. It is also established such is not an export of service and no activity as such is carried outside Karachi/Pakistan"

10/ The Commissioner (Appeals) SRB upheld the Order-in-Original but altered extent of penalties as detailed in paragraph 30 of the Order-in-Appeal.



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11/ The Appellant in the grounds of appeal and in subsequent written and oral submission have stated as follows:-

- i) That, the learned Commissioner (Appeals), Sindh Revenue Board erred in law and on facts by drawing a conclusion that the Services of the Appellant's originate and terminate in the Province of Sindh.
- ii) Secondly, the Commissioner (Appeals) erred in law and on facts by concluding that the Appellant provides services to a foreign shipping Principal from whom service fee is received in US Dollar through normal banking channels under the Foreign Exchange Rules, Regulations and Procedures notified by the State Bank of Pakistan for export, is not EXPORT OF SERVICES, thus taxable under Sindh Sales on Services Act-2011 and again erred in law and on facts drawing conclusion that the Appellant's services to a foreign shipping Principal from whom service fee is received in US Dollar through normal banking channels under the Foreign Exchange Rules, Regulations and Procedures notified by the State Bank of Pakistan for export, is even if EXPORT OF SERVICES, still taxable under Sindh Sales on Services Act-2011 and further erred in concluding that there exists mens rea and willful default and thereby imposed a penalty of Rs.7,402,485/- alongwith default surcharge.
- iii) Without prejudice to what has been stated above, it is further submitted that:-
"that the learned Commissioner (Appeals) SRB erred in law and on fact, by taking guidance from a website, that Ship Management Services of "Engagement or providing of crew" (under tariff heading 9805.2100) were taxable during the tax period July, 2011 to June, 2013, and ignored the fact that the legislature incorporated the definition of Ship Management Services – engagement or providing of crew, vide Finance Act, 2013, making it effective for the tax period July, 2013 onwards and not retrospectively".



12/ During the course of hearing Mr. Haider Hussain Baig argued that definition was added in 2013, thus services became effective from July, 2013, in absence of a definition, it cannot be given retrospective effect. It was further argued that if the same are taxed it would not be competitive and If providing crew is part of ship management service than what was the need to incorporate the same on 01.07.2013 in the definition. The addition of the clause is to facilitate the assessee and the assessor to specifically tax the specific activity. It clarified ambiguities, and also submitted the following citations:-

- i) AIR (38) 1951 Supreme Court 128 "Interpretation of Statutes-Retrospective operation. Every statute is prime facie prospective unless it is made to have retrospective operation. This rule of interpretation should be applied for the purpose of interpreting our Constitution".
- ii) PLD 1969 Supreme Court 1987, Adnan Afzal v/s Captain Sher Afzal Interpretation of Statutes. Retrospectivity of legislation-Matter retrospective it is merely procedural in nature. Such matter, however, would not operate

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retrospectively if it touches a right in existence at time of passing of legislation-
Matters of procedure-what are.

- iii) FTO complaint No.181/LHR decided 19.03.2012, Muhammad Ashiq v/s Secretary Revenue Division Islamabad. Complaint against alleged illegal levy of tax under 148 of the ITO, 2001 denial of reasonable opportunity and refusal of adjournment under sought by complainant for the first time constitutes maladministration under Section 2(3) of the FTO Ordinance.

13/ The Respondent submitted comments, wherein it has been stated,

- i) The Appellant voluntarily registered with Sindh Revenue Board on 18.07.2012, under Service Category / tariff heading 9805.2100-Ship Management Service which is a taxable activity effective from 01.07.2011 at the applicable rate as specified in 2nd Schedule to SST Act-2011.
- ii) The tax profile showed that since registration, no Sindh Sales Tax had been deposited. That 'Null' returns filed for the tax period July, 2012 to September, 2015.
- iii) Audited Financial Statement for the year ending June 30th, 2012 and June, 2013 showed fee earned as Rs.40,230,902/-.

14/ The Respondent contended that the appellant signed a contract agreement dated June 26, 2008 with SCINICARIELLO Ship management S.p.A, Naples. The appellant is in the business of recruiting seamen for Foreign Principals as licensed agents under the Shipping Regulations of Government of Pakistan under the said agreement. The appellant is appointed as Manning Agent in Pakistan, responsibility is to render recruitment services, the process of recruitment starts with the requisition from Principal, the business activity i.e. service, commences and terminates in province of Sindh. The service is consumed in Pakistan in the form of recruitment and handing over on board the seamen. Here no Export activity is involved and there is no exemption on the payment of Sindh Sales tax on 'engagement or providing of crew'.

15/ The respondent added that under Section 3 Subsection I of SSToS Act-2011, a taxable service is a service listed in the Second schedule to the Act, provided (a) by a registered person from his registered office or place of business in Sindh (b) in the course of an economic activity, including in the commencement or termination of the activity. Here, the appellant has place of business in Sindh, the whole of economic activity including the commencement or termination of the activity takes place in the province of Sindh. Therefore, the activity of 'engagement or providing of crew is a taxable activity'.

16/ The respondent further submitted that the appellant's argument relating to definition incorporated vide Finance Act, 2013 under Section 2 (82) of the Act-2011 and insertion of Rule 40C vide notification No.SRB-3-4/3/2012 dated 02.04.2014. Perusal of two reveals that the contents of the definition as given in Section 2 (82) of the Act, 2011 and Rule



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40C (2) of the Sindh Sales Tax on Services Rules-2011 are identical. In the absence of express definition of the core business activity the same is to be viewed and understood in common parlance. Nevertheless, in the instant case the appellant is a manning agent and providing or rendering "recruitment services" to its Principal - Is engaged in hiring of crew under a contract agreement – which is a function of ship management service provider, thus the same is a taxable activity under SSToS Act-2011- even in absence of a definition during the period July, 2011 to June, 2013.

17/ I have heard the oral arguments of both sides and have perused the available record of the case. The arguments moved by the Appellant that 'their activity is an export of services' and that 'Export' is still in the domain of the Federal government. Here, the record shows that the Appellant has entered into an agreement with M/S SCINICARIELLO Ship Management S.p.A Naples, whereby the Appellant has been appointed as Manning Agent in Pakistan with effect from 1st July, 2008. The very first clause of the agreement speaks about the task assigned to the Appellant, under which the Appellant is to recruit Pakistani seamen as per the requirement of the M/S SCINICARIELLO Ship Management S.p.A.

18/ This is further evidence to the fact that the Appellant has been appointed as a 'Manning Agent' to recruit seamen in line with communicated requirements. All the acts and formalities mentioned are shown to be carried out 'in Pakistan'. Under clause-6 of the agreement the Principal company has agreed to pay for 'recruitment services' and connected expenses. Next, the contents of the agreements show that services undertaken by the Appellant commence and terminate in Sindh / Pakistan.

19/ As a consideration the Appellant receives a fee per month per person. In this regard it is not out of context to peruse the argument put forth by the Respondent, "that a license has been granted to the Appellant by the Ministry of Port and Shipping Pakistan, under Section 119 of the Ordinance. The title of the license says 'License' to engage or supply Sea farers'. The appellant is licensed for 'engagement' or supply of seamen jointly.

20/ In the instant argument, the clause 4 places the responsibility of the seamen on to the shipping line and the appellant appears to be free, harmless and indemnified. The record of the activities carried out by the Appellant as seen from the agreement, license and flow chart shows to be that a manning agent. The same are carried within Pakistan and no evidence of any activity of the Appellant has been found to have been carried outside Pakistan. Here the Manning Agent engages in providing recruitment and ancillary services, it can safely be concluded that no export activity is involved in providing the recruitment services and hence it cannot be termed as 'Export service'.

21/ The Commissioner (Appeals) at paragraphs 16 and 17 of the Order-in-Appeal has also discussed the issue in detail and have successfully established that the activity in question is not in any manner an 'export of service'. The Appellant had argued before the learned Commissioner (Appeals) that exemption is available to I.T. based system development consultants and the auditors and accountants are exempt under Notification

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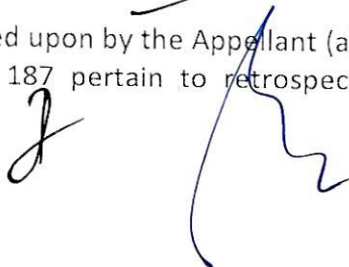
No. SRB-3-4/7/2013 dated 18.06.2013, therefore such exemption be made available to the Appellant. Therefore, the learned Commissioner (Appeals) had held that if the Appellant was of such view than he could move an application under Section 10 of the SSToS Act-2011, which he has not done. The forum of the Commissioner (Appeals) was not for granting the exemption but to deal with the Appeals. Even in this regard the stand taken by the Appellant was contrary, when he asserted that such transaction involves extra territoriality. This issue was also discussed in detail by the learned Commissioner (Appeals) at paragraph 20 of the OIA, who has convincingly disproved the argument put forth by the Appellant.

22/ The next issue raised by the Appellant that what was included in 'Ship Management service' was previously provided in Rule 40C (2) of SSToS Rules-2011 through notification No.SRB-3-4/2/2012 dated 2nd April, 2012. Whereafter, the definition of Ship Management services was added under clause 82 of Section 2 through Finance Act, 2013 effective from 1st July, 2013. Thus 'Ship Management services' became a taxable service from 1st July, 2013. Before discussing the preceding argument – I would like to bring to note that one very patent obvious fact which seems to have been omitted / overlooked by the learned representative of the Appellant that against the entry at tariff heading 9805.2100, the description reads as 'Ship Management services', which has remained unchanged.

23/ In cases where a specific definition of description 'Ship Management services' is not available either under the Act or the Rules made thereunder one has to look in to the ordinary dictionary meaning, customary practices and the meaning in common parlance. In present times referral is made to the website to give the accurate update – as development is taking place at an accelerated pace, thus looking at websites / dictionaries is not sans logic and cannot be disregarded, specially in the instant case when the website mentioned covers the services, that a ship management company provides more specifically states that 'the ship management company should provide crew for manning the ship'. It is the cornerstone on which the foundation of ship management services is laid, not dependent on the fact, whether the definition is covered under the SSToS Act-2011 or the Rules. The hesitation expressed by the Appellant is incomprehensible.

24/ It is an established principle of law that if a statute does not provide a definition for an activity then that activity will be seen at par with the ordinary, customary business practices. And since the "Ship Management Services" is a phrase, therefore dictionary would not be provided its meaning therefore reliance of the learned Commissioner (Appeals) on the website of a person / company performing ship management services was correct. Even otherwise, the manning or crew are an integral part towards ship management service and in fact is a foundational step to the same. Therefore, it is right to hold that even in absence of any definition in the legislation, the activity remains covered under tariff heading 9805.2100 i.e. the ship management services, which is in force from inception of the Act-2011.

25/ The judgments relied upon by the Appellant (a) AIR (38) 1951 Supreme Court 128 and (b) PLD 1969 Supreme Court 187 pertain to retrospectivity of a statute. It will be seen that



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since the services were classified as 'ship management services' from 01.07.2011, from where the law has been applied. Neither the Act nor the Rules have changed the nature of classification of service. Therefore, such judgments of the Appellant are not attracted in the present case. The third citation is that of Federal Tax Ombudsman of Pakistan, here complaint was made to the Honorable FTO, on ground that adjournment sought for the first time was refused and no opportunity of hearing was provided to the Appellant. Again, the said citation is not attracted in the instant case – ample opportunities have been given at all the forum and all the points have been discussed threadbare.

26/ The learned Commissioner (Appeals) is his Order at paragraph 30 of the Order-in-Appeal has given substantial relief to the Appellant. However, if the Appellant deposits the principal amount of Sindh Sales Tax involved alongwith the default surcharge under Section 44 of the SSToS Act-2011 and penalties imposed under clauses 11 and 13 of the table to Section 43 of the SSToS Act-2011 within 30 days of the receipt of the said order, extreme leniency would be shown as a special case, and penalty amounting to Rs.6,436,944/- imposed under Cl(d) would not be required to be paid by the Appellant.

Thus Order-in-Appeal is modified to the above extent only.



Razia Sultana Taher
(Razia Sultana Taher)
TECHNICAL MEMBER

Karachi

Dated : 07.12.2015

Copies supplied to :-

1. The Appellant through authorized Representative.
2. The Assistant Commissioner (Unit-13), SRB, Karachi.

Copy for information to :-

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

The Chairman has written his own opinion, which is annexed.

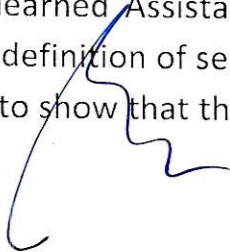
Justice (Retired) Nadeem Azhar Siddiqi: I, have the privilege of going through the opinion recorded by the learned Technical Member of the Tribunal. For the reasons mentioned below I am unable to subscribe to the view taken by the learned Technical Member and I express my opinion as under.

28. The allegation against the appellant is that they are providing and rendering taxable services of ship management services falling under tariff heading 9805-2100 of the second schedule of the Sindh Sales Tax on Services Act, 2011 (herein after referred to as the Act), which were chargeable to Sales Tax @ 16% from 1st July 2011. Further allegation against the appellant was that during examination of the annual Audited Financial Accounts, its revealed that revenue had been generated from providing or rendering taxable service of ship management which involved the Sindh Sales Tax of Rs.3,025,130/= during the Tax Periods from July, 2011 to June, 2012 and Rs.3,411,814/= during the Tax Periods July, 2012 to June, 2013. It was further alleged that appellant failed to e-file the Sindh Sales Tax Returns pertaining to the tax periods from July, 2011 to June, 2012 and e-filed Null returns for the period from July, 2012 to June, 2013.

29. The learned Representatives of Appellant submits that the supply of crew is not covered by the definition of "ship management service" till the definition was added effective from 11th July, 2013. They then submits that the appellant is providing crew exclusively to the foreign vessels and the supply of crew to foreign vessels is amounts to export of service and the imposition of sales tax on export services to other countries is outside the scope of Provincial Assembly of Sindh and Sindh Sales Tax on Services Act, 2011. The other submission was that the Sindh Sales Tax on the export services is inconsistent with the Federal Law and thus should have to be treated as void as per the Constitution of Pakistan with reference to Entry No. 27 of the Federal Legislative List, Articles 70 and 143 of the Constitution. They further submit that tax cannot be levied retrospectively without clear intention of the legislature and since the definition of "ship management service" was inserted on 11th July, 2013 the tax cannot be levied from July 2011.

30. Mr. Syed Rizwan Ali the learned Assistant Commissioner submits that providing crew is included in the definition of services and referred to profile of companies available on internet to show that the ship management companies

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are providing the crew to vessels and submits that providing crew to ships is internationally recognised as part of ship management service. He then submits that the rule 40C was added in the rules on 2.4.2012 which provides engagement or providing of crew and the insertion ^{was} for the purpose of clarification. He then submits that the service was provided within Sindh from where the crew were recruited and were sent to ship/vessel. He then submits that the service is not export as the crew were hired in Sindh on the basis of requisition received from principal in accordance with the laws applicable in Sindh and the crew signed the ship with in Sindh. He further submits that the law was not applied retrospectively as the "ship management service" is part of 2nd Schedule since inception.

31. From the perusal of record it appears that the appellant is acting as Manning Agent for recruiting Pakistani seafarers only and exclusively for foreign vessels. The first question appearing in the matter is whether recruiting/providing of seafarers/crew to foreign ship/vessel is covered by the definition of "Ship Management Service" Tariff heading 9805-2100. The learned Assistant Commissioner has totally ignored this important point and without any comprehensive discussion simply states that the appellant is engaged in the business of recruiting seamen for foreign principals as licensed agent under the Shipping Regulations of the Government of Pakistan which is specifically covered under the services of Ship Management Services falling under Tariff Heading 9805-2100. No doubt the Ship Management Service is included in the 2nd Schedule since the inception of Act of 2011 without defining the same in the Act or the Rules. Rule 40C was added in the Rules through Notification dated 2nd April 2012 which provides that ship management service includes engagement or providing of crew. Thereafter vide amendment in the Act the definition of Ship Management Service was added in the definition clause as 2 (82) effective from 11th July 2013 and the said definition provides that Ship Management Services includes engagement or providing of crew.

32. In absence of any definition available in the relevant statute the plain dictionary meaning has to be considered. The "Ship Management Services" is a term not defined in ordinary dictionaries. The word ship and services do not require any research or deliberation. The key word is Management. Apparently management means to manage and take care of some-thing. To manage a



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Ship/Vessel or any other thing it is necessary that the person who is managing the affairs of a ship is part of the management and is in control of the vessel/ship. It is not the case of the respondent that the appellant has any control over the ship or the appellant can exercise any authority over the ship/vessel. Without having control over a ship/vessel it cannot be said that the appellant is providing or rendering Ship Management Services. For management it is necessary that the person in an organization is vested with certain amount of discretion and independent judgment in managing the affairs.

33. The words "Manage" and "Management" has been defined in the Black's Law Dictionary, Tenth Edition as under:

"Manage" to exercise executive, administrative and supervisory powers. To control, carry, or supervise. To regulate or administer a use or expenditure.

"Management" The people in an organization who are vested with a certain amount of discretion and independent judgment in managing its affairs.



Apparently the appellant had not exercised any executive, administrative and supervisory control over the ship and in no way involved in managing the affairs of ship. The appellant only provide crew to ship/vessel on the instructions of its client. Mere supply of crew to manage the ship after their appointment does not come within the definition of "Ship Management Service". The definition of "Ship Management Service" section 2 (82) was added to the Act effective from 11th July, 2013 as under:

(82) "Ship management service" includes---

- (a).....
- (b) engagement or providing crew;
- (c)
- (d)

34. In section 2(82) of the Act 2011 the word "includes" has been used to enlarge the meaning of words "ship management service". It is

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pertinent to see the meanings and connotations of the phrase "include
"as defined in the Legal Thesaurus by William C. Burton Deluxe Edition
published in 1980 page 269;

"absorb, adscribe, be composed of, be formed of, be made
of, begird, boast, bound, bracket, circumscribe, classify, close
in, combine, compass, complete, comprehend, comprehendere,
consist of, consolidate, contain, cover, embody, embrace, encircle,
encompass, engird, envelop, girdle, hold, incorporate, involve,
merge, put a barrier around, span, subsume, surround, take in, unify,
unite

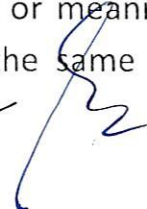
FOREIGN PHRASES: *In eo quod plus sit semper inest et minus.* The less
is always included in the greater. *Inclusio unius est exclusio alterius.*
The inclusion of one thing is the exclusion of another."

In view of the above if the definition "ship management service " is put
to test it is very clear that more is being read in the word "includes"
used in the definition when put to above test it is clear that the
Respondent is reading more in the less.

34. In the reported case of K.N. Kham versus Controlling Authority,
Union Committee No. 60 (PLD 1970 Karachi 730) it has been held that "
it is well settled that the word "include" is used in an interpretation
clause in order to enlarge the meaning of the words or phrases occurring
in the body of the statute or where it is intended that while the term
defined should retain its ordinary meaning, its scope should be widened
by specific enumeration, of certain matters which its ordinary meaning
may or may not be exhaustive, and when it is so used these words or
phrases must be considered as comprehending not only such things as
they signify according to the natural import, but also those things which
the interpretation clause declares that they should include". In another
reported case of P.S. Mardan Shah versus Chief Land Commissioner
Sindh (PLD 1974 Karachi 375) it has been held that "the well- established
rule of interpretation is that the word "includes" is used as a work of
enlargement and it ordinarily implies that something else has been given
beyond the general language".

35. The citations mentioned above does give powers to the framers of
law to enlarge the definition or meaning of a word or a phrase in the
body of the statute but in the same breath does not give license to



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enlarge the ordinary dictionary meaning of a word or a phrase. From the above it is clear that the use of the word "includes" does not take away the ordinary meaning, but besides it bring within its ambit something which otherwise may not be ordinarily included within its ambit. The legislature has enlarged the meaning of "Ship Management Service" and has widened its scope beyond the general meaning effective from July, 2013. From the use of word "include" it is clear that "ship management service" do not ordinarily include engagement or providing of crew by a third person, but by legal requirement it was added to the definition. No doubt that the Tariff heading 9805.2100 "ship management service" is available in the Schedule to the Act since its inception, but in absence of clear definition tax could not be levied on the basis of assumption or presumption. The tax can only be levied with clear intendment from 11th July, 2013 when section 2 (82) was added to the Act. The tax cannot be levied through insertion in the Rules as such insertion of Rule 40C is of no help. The tax periods involved in this case is from July, 2011 to June, 2013 when the definition of "ship management service" was not even available hence no tax by implication can be levied.

35. The other question is whether the service of providing crew to foreign Ship/vessel is export or not. According to appellant the crew was provided to foreign ship/vessel from Sindh for use outside Sindh and not within Sindh. Entry No.27 of the Fourth Schedule, Federal Legislative provides "import and export across customs frontiers as defined by the Federal Government, inter provincial trade and commerce, trade and commerce with foreign countries, standard of quality of goods to be exported out of Pakistan". Article 142 (a) of the Constitution provides that subject to the Constitution the Majlis Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List. Entry No.27 of Federal Legislative list provides Import and export without mentioning the goods or services as used in the end of the entry in relation to standard of quality of goods to be exported out of Pakistan. This clearly means that making of law with regard to import and export of goods and service, both are with in domain of the Federation and inspite of 18th amendment in the Constitution the Provincial Assemblies are not empowered to make laws relating to



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services which are to be exported across customs frontiers or outside Pakistan. The learned Assistant Commissioner pointed out clause (b) of sub-section (1) of section 3 of the Act which provides that any service listed in the Second Schedule of the Act if provided in the course of an economic activity, including in the commencement or termination of the activity and submits that the service was provided and rendered in Sindh in as much as the crew had joined the vessel/ship from the port of Karachi. The learned Assistant Commissioner is right in saying that the service was provided or rendered in Sindh.

But the question is that the service which was meant for consumption outside Pakistan can be taxed by the Act of Provincial Assemblies. The 18th amendment allows Provincial Assemblies to levy sales tax on services provided or rendered within its jurisdiction. The services, which come within ambit of export of service is not within domain of the Provincial Assemblies and the Provincial Assemblies cannot levy sales tax on services exported from Pakistan. However in this case the services were provided or rendered with in Sindh from the office of the appellant located in Sindh. The crew/staff engaged were assigned to the foreign principal at Karachi as the crew/staff were boarded on ship from Karachi. Since the Service recipient is located outside Pakistan the Service provider is liable to pay Sindh sales tax from 11th July, 2013 when the "Ship Management Service" was included in the definition clause.



36. In view of the above discussion no sales tax can be levied upon services of engagement or providing of crew before 11th July, 2013.

In view of above the appeal is allowed.

Karachi.

Dated: 23.12.2015

(Justice[®] Nadeem Azhar Siddiqi)

CHAIRMAN

ORDER OF THE TRIBUNAL

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

The Chairman is of the opinion that the services of engagement or providing crew before 11th July, 2013 did not come within ambit of "Ship Management Services", tariff heading No. 9805.2100.

The Technical Member is of the opinion that the services of engagement or providing crew before 11th July, 2013 come within ambit of Ship Management Service, tariff heading No. 9805.2100.

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

1. Whether the recruitment/~~engagement of~~^{of} providing crew by the appellant on behalf of its client before 11th July, 2013 fell within the ambit of "Ship Management Service" tariff heading No. 9805.2100?

Presently there is no Third Member of the Tribunal. 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
Member

Justice (retired) Nadeem Azhar Siddiqi
Chairman

Karachi.

Dated.11.01.2016

Copies supplied to:-

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

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BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

Appeal no: AT-212/2015

M/s Noarsh Shipping Services (Pvt.) Ltd.....Appellant

VERSUS

- 1) The Commissioner(Appeals), SRB, Karachi
- 2) Deputy Commissioner (Unit-15), SRB, Karachi
- 3) Assistant Commissioner (Unit-13), SRB, Karachi.....Respondent

Mr. Mirza Haider Hussain Baig, FCA and

Mr. Masood Ahmed Baig Advocate.....For Appellant

Mr. Zohaib AC. S.R.B.....For Respondent

Date of hearing: 28-02-2018

Date of order: 12-03-2018

ORDER

Muhammad Ashfaq Balouch:

This appeal was heard by the D.B.1 of this Tribunal. However the difference of opinion between the Honorable Chairman and the Learned Technical Member, it has been referred by the Honorable Chairman, Appellate Tribunal to the undersign in term of Section 60 (13) of the Act. The specific point on which this reference is made is reproduced as under:-

- (i) Whether the recruitment of crew by the appellant on behalf of its client before 11th July 2013 fell within the ambit of "ship management Service: tariff heading No: 9805.2011?"

Heard Mr. Haider Shamsi FCA for the appellant and Mr. Zohaib AC SRB, for respondent/department, perused the orders and have gone through the record.

Mr. Haider Shamsi FCA on behalf of appellant has argued that he has gone through different dictionaries but has not been able to locate the meaning of Ship Management Service. It has been also argued that Honorable Chairman in Para 34 of the order has given meaning and connotation of Phrase include the order of Learned Technical Member is on

basis of website which could not be treated as base for imposing tax. At the most it could be treated as hear said evidence no specific law is cited.

Mr. Zohaib AC SRB adopted the previous arguments and added that services falls under schedule 1 and 2 of the SST Act 2011 and service should be treated as taxable service

It is evident from the record that appellant is acting as manning agent for recruiting Pakistani Sea fares exclusively for foreign vessels. Such services as per department are covered within definition of "Ship Management Service" and falls under tariff heading 9805.2100.

While the plea of the appellant is that the supply of crew is not covered by the definition of "Ship Management Service" before the amendment made effective from 11th July 2013. Further appellant is providing crew only to the foreign vessels, which is export of service to foreign countries customers and is outside scope of Sindh Sales Tax on Services Act 2011.

It is worthwhile to mention here that definition of "Ship Management Services" is not available in statute before 11-July-2013. The meanings of the "Ship Management Services" do not place in ordinary dictionaries. However, from analysing the "Ship Management Services" the key word in present case would be management. The meaning of management as per Wikipedia....

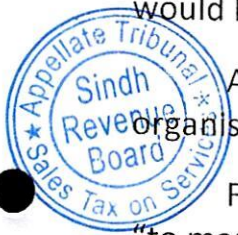
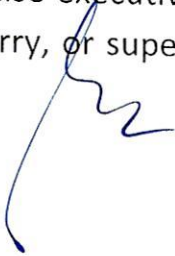
According to Henri Fayal "to manage is to forecast and to plan, to organise, the command to co-ordinate and to control."

From the plane reading of definition supra word management means "to manage, to plan, to organise, to command and to control."

The Honorable Chairman in Para 33 of his order in present appeal have given the meaning of words "manage and management as under:-

"Para 33:- The words "manage" and "management has been defined in the Black's Law Dictionary, Tenth Edition as under:

"Manage" to exercise executive, administrative and supervisory powers. To control, carry, or supervise. To regulate or administer a use or expenditure.



“Management” the people in an organization who were vested with a certain amount of discretion and independent judgment in managing its affairs.

Apparently the appellant has not exercised any executive, administrative and supervisory control over the ship and in no way involved in managing the affairs of ship. The appellant only provide crew to ship/vessel on the instructions of its client. Mere supply of crew to manage the ship after their appointment does not come within the definition of “Ship Management Service”. The definition of “Ship Management Service” section 2 (82) was added to the Act effective from 11th July, 2013 as under:

(82) “Ship Management Service” includes—

- (a).....
- (b) engagement or providing crew;
- (c)
- (d)



From the meaning supra

Apparently when appellant has no role to command, to manage and to control the ship/vessel, in absence of above power/control over ship could not be observed that appellant is rendering ship management services.

It is also admitted position that the definition of ship management services was added to sec 2 (82) of S.S.T Act 2011 from July 2013.

I am also fully in agreement with the observation recorded by Honorable chairman in Paras 34 and 35. These paras are reproduced here as under:-

Para 34:- In section 2(82) of the Act 2011 the word “includes” has been used to enlarge the meaning of words “Ship Management Service”. It is pertinent to see the meanings and connotations of the

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A small, handwritten mark or signature in blue ink, consisting of a few loops and a horizontal stroke.

phrase "include "as defined in the Legal Thesaurus by William C. Burton Deluxe Edition published in 1980 page 269:

"absorb, describe, be composed of, be formed of, be made of, beget, boast, bound, bracket, circumscribe, classify, close in, combine, compass, complete, comprehend, comprehender, consist of, consolidate, contain, cover, embody, embrace, encircle, encompass, envelop, girdle, hold, incorporate, involve, merge, put a barrier around, span, subsume, surround, take up, unify, unite

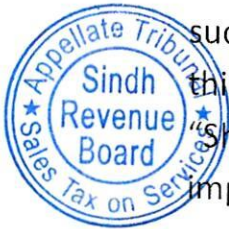
FOREIGN PHRASES: In eo quod plus sit semper inest et minus. The less is always included in the greater. Inclusionum est exclusio alterius. The inclusion of one thing is the exclusion of another."

In view of the above if the definition "Ship Management Service" is put to test it is very clear that more is being read in the word "includes" used in the definition when put to above test it is clear that the Respondent is reading more in the less.

Para 34:- In the reported case of K.N Kham versus controlling Authority, Union Committee No. 60 (PLD 1970 Karachi 730) it has been held that "it is well settled that the word "include" is used in an interpretation clause in order to enlarge the meaning of the words or phrase occurring in the body of the statute or where it is intended that while the term defined should retain its ordinary meaning, its scope should be widened by specific enumeration, of certain matters which its ordinary meaning may or may not be exhaustive, and when it is so used these words or phrases must be considered as comprehending not only such things as they signify according to the natural import, but also those things which the interpretation clause declared that they should include". In another reported case of P.S Mardan Shah versus Chief Land Commissioner Sindh (PLD 1974 Karachi 375) it has been held that "the well-established rule of interpretation is that the word "includes" is used as a work of enlargement and it ordinarily implies that something else has been given beyond the general language".



Para 35:- The citations mentioned above does give powers to the framers of law to enlarge the definition or meaning of a word or a phrase in the body of the statute but in the same breath does not give license to enlarge the ordinary dictionary meaning of a word or phrase. From the above it is clear that the use of the word "includes" does not take away the ordinary meaning, but besides it bring within its ambit something which otherwise may not be ordinarily included within its ambit. The legislature has enlarged the meaning of "Ship Management Service" and has widened its scope beyond the general meaning effective from July, 2013. From the use of word "include: it is clear that "Ship Management Service" do not ordinarily include engagement or providing of crew by a third person, but by legal requirement it was added to the definition. No doubt that the Tariff Heading 9805.2100 "Ship Management Service" is available in the schedule to the Act since its inception, but in absence of clear definition tax could not be levied on the basis of assumption or presumption. The tax can only be levied with clear intendment from 11th July 2013 when section 2(82) was added to the Act. The tax cannot be levied through insertion in the Rules as such insertion of Rule 40C is of no help. The tax periods involved in this case is from July, 2011 to June, 2013 when the definition of "Ship Management Service" was not even available hence no tax by implication can be levied."



In view of above facts and legal position when the tariff heading 9805.2100 "Ship Management Service" is available in the schedule to this Act since 2011, but its definition was not given. It is a settled law that tax could not levied on the bases of assumption or presumption. Or by insertion of rules as such rule 40C. Admittedly from July 2011 to June 2013, definition of "Ship Management Service" was not available in SST Act 2011. Hence, during this period tax cannot levied.

It is not denied by either side that crew was provided to Foreign ships and Vessel. Entry No: 27 of Forth Schedule, Federal Legislative defined the imports and exports, which is subject of Federal Government and Article 142(a) of the constitution of Pakistan provides that only Majlis Shoora


(Parliament) is empowered to Frame/Pass Law regarding Federal Legislative list, not the Provincial Assembly.

In view of above legal position in the instant case tax cannot be levied before the amendment made on 11th July 2013.

Resultantly, I concur with the findings of Honorable Chairman recorded in present case that tax cannot be levied upon the appellants during tax period involved.

This order is submitted to Honorable Chairman, A-T SRB for disposal of appeal.




(Muhammad Ashfaq Balouch)
Judicial Member

ORDER OF THE TRIBUNAL

There was difference of opinion between the Chairman and learned the Technical Member (Ms. Razia Sultana Taher).

The Chairman was of the opinion that the services of engagement or providing crew before 11th July, 2013 did not come within ambit of "Ship Management Services", tariff heading No. 9805.2100.

The learned Technical Member was of the opinion that the services of engagement or providing crew before 11th July, 2013 come within ambit of Ship Management Service, tariff heading No. 9805.2100.

The matter was referred to the Third learned Judicial Member (Mr. Muhammad Ashfaq Balouch) of the Tribunal for hearing the following point:-

Whether the recruitment/engagement or providing crew by the appellant on behalf of its client before 11th July, 2013 fell within the ambit of "Ship Management Service" tariff heading No. 9805.2100?

The learned Judicial Member after hearing the parties concluded that the tax cannot be levied before the amendment made on 11th July, 2013 and concur with the findings of the Chairman that the tax cannot be levied upon the appellant during the tax period involved.

The appeal is allowed.

Copy of the Order may be issued to the parties.



Muhammad Ashfaq Balouch
Member



Justice (R) Nadeem Azhar Siddiqi
Chairman

Karachi.

Dated.13.03.2018

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SINDH REVENUE BOARD

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