

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-98/2016

M/s JS Bank Limited Appellant

Versus

Commissioner-I, SRB Respondent

APPEAL NO. AT-99/2016

Assistant Commissioner (Unit-II), SRB Appellant

Versus

M/s JS Bank Limited Respondent

Mr. Khawaja Aizaz Ahsan, Advocate For the Appellant

Mr. Zaheer Hussain, Assistant Commissioner (Unit-9), SRB For the Respondent

Date of hearing 28.03.2019

Date of Order 18.04.2019

ORDER

Agha Kafeel Barik: These are two cross appeals, one filed by the JS Bank and the other by SRB through its AC-2, SRB, both against the order in appeal of Commissioner (Appeals) dated 10.10.2016. Since the facts of both the appeals are the same, these are disposed of in a consolidated order as under.

2. The facts of the case are as under.

2.1. The appellant, a banking company registered with SRB under section 24 has been e-filing ST returns with SRB regularly since its inception. However, on 18.08.2017 the AC-2, SRB issued a show cause notice confronting the Bank as to why the value of its various services mentioned below should not be subjected to SST under tariff code 9813.4990 (Other services not specified elsewhere) as same were not offered for tax in its SST returns for the period from July, 2011 to December, 2013.



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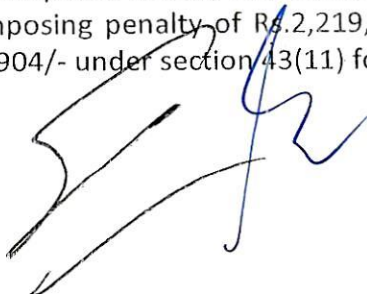
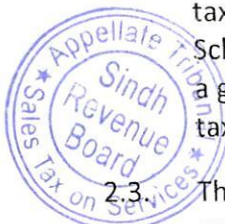
<u>Services</u>	<u>Value</u>
i. Bankassurance	80,826,942
ii. Home remittance fees	102,90,5935
iii. State Bank rebates	6,816,953
iv. Rebate from foreign banks	20,161,470
v. Foreign exchange gain on remittance by Western Union	<u>66,796,671</u>
	<u>277,487,971</u>

The nature of these services is elaborated as under.

- i. **Bancassurance:** A bank markets and sells insurance policies to its customers by referring and connecting them to insurance companies. The bank acts as a facilitator between its customers and insurance companies. The insurance company in turn, pays the bank some money out of insurance premium it earns from its clients.
- ii. **Home remittance through Pakistan Remittance Initiative Scheme ('PRIS'):** Home remittance is a service of fund transfer by means of electronic transfer against which the expenses are paid by the State Bank of Pakistan as rebate.
- iii. **State Bank Rebate on government securities:** A separate counter is provided by the Bank for introducing defence and other saving certificates to visitors and customers. In this regard, a form is filled and the amounts in question received against such scheme is transferred to the State Bank of Pakistan, who pays the incentive commission to the Bank.
- iv. **Rebate from Foreign Correspondent Bank:** Foreign correspondent Banks voluntarily share a portion of the service charges they receive from their own customers abroad with the Pakistani Banks. This sharing of income is called a rebate.
- v. **FX Gain on Western Union Remittances:** This includes any gain on foreign exchange that may be earned by a bank due to fluctuation in exchange rates during the time taken in end to end delivery of remittances sent through Western Union.

2.2. In reply to the Show Cause Notice the AR submitted that the said services were not taxable under the Act, not being specifically categorized under any tariff code of 2nd Schedule and that Tariff heading 9813.4990 (other services not specified elsewhere) was a general clause under which such services which fall outside the ambit of SST cannot be taxed.

2.3. The AC-SRB was not satisfied with the reply and proceeded to pass order in original under section 23 on 10.08.2015, whereby he assessed the total value of all the above services computed at 227,487,971 rendered by the Bank to SST @16% at Rs.44,398,075, beside imposing penalty of Rs.2,219,904/- under section 43(3) and further penalty of Rs.2,219,904/- under section 43(11) for various defaults.

2.4. On appeal the Commissioner (Appeals) vide his order in appeal dated 10.10.2016, confirmed the order in original in respect of taxability of four (4) out of five (5) services namely (i) bancassurance (ii) home remittance fee (iii) SBP rebates and (iv) rebate from foreign banks. However, in respect of foreign exchange gain on remittance by Western Union, he held that it is not a service, hence not taxable under the Act. It is on this issue that the Department has filed appeal before us, whereas the appellant Bank has challenged the impugned order of Commissioner (Appeals) on confirmation of SST on other four (4) services.

3. The learned AR, submitted his arguments as under:

Mr. Khawaja Aizaz Ahsan Advocate argued that unless a service is specifically enlisted in the Second Schedule same is not taxable and taxing any service under 9813.4990 as others would render other sub-headings of the tariff code as otiose or redundant, as observed by the superior courts. He relied on the judgments of this Tribunal in the cases of Allied Bank of Pakistan, Silk Bank and MCB Bank Limited. About the judgment of Sindh High Court in the case of J.S. Bank decided on 11.06.2015 he stated that the judgment of the High Court in the case of Citi Bank reported as 2014 PTD 284 decided on 30.10.2013 was very much in the field. However he argued that after the decision of the Honorable Supreme Court in the case of PTV Corporation in Civil Appeal No.1509 of 2016 decided on 23.10.2018 the judgment of Sindh High Court in the case of J.S. Bank has been over ruled. He cited the relevant part of the judgment as under.

"13. Another argument advanced by the learned counsel for the respondent and which found favour with the learned High court was that even if TV license fee was not covered by any of the specific sub-headings of PCT Heading 98,12 it would be covered by PCT 9812.9090: "Others". This argument ignores the scheme of division of specific services under the various sub-headings of PCT Heading 98.12. The various types of telecommunication services are bunched together in separate groups. At the end of each bunch on finds the entry "Others". The services under the sub-headings of PCT Heading 98.12 are in 8 groups. And the sub-heading "Others", therefore, appears eight times under PCT Heading 98.12. for instance, the first group consists of various kinds of telephone services. These are listed from PCT 9812.1000 to 9812.1970. At the end is PCT 9812.1990: "Others". The last group is of sub-headings PCT 9812.9000: 'Audio Text services', PCT 9812.9100: 'Teletext services', 9812.9200: 'Trunk radio services', PCT 9812.9300: 'Paging services', PCT 9812.9400: 'Voice paging services', PCT 9812.9410: 'Radio paging services', PCT 9812.9490: 'Vehicle Tracking Services' and 9812.9500: 'Burglar alarm services', followed by PCT 9812.9090: "Others". The sub-heading "Others" is, therefore, to be read ejusdem generis with the preceding entries in the group. It will apply to and cover only such services which are similar to the ones specifically described before it. It cannot include every conceivable telecommunication service. Reading the sub-heading "Others" to include all kinds of telecommunication services would render all the specific sub-headings otiose. Such an interpretation being clearly flawed cannot be sustained."

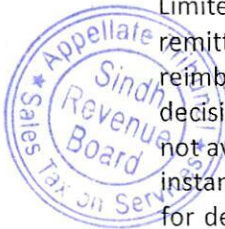


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4. In rebuttal to his arguments and in support of departmental appeal Mr. Zaheer Hussain AC and Mr. Mehrab Khan AC submitted their arguments as under:

1) **Bancassurance Service:** As regards to the bancassurance services, Mr. Zaheer Hussain submitted that, the bank provides bancassurance services to insurance company under the agreement and charges/commission receives from insurance companies but not from the customer/account holder, therefore no burden or concept of double taxation arises because under the bancassurance agreement the insurance company is service recipient and the bank is service provider. The said services are taxable under the tariff heading 9813.4000 read with tariff heading 9813.4990 of the Second Schedule to the Act, 2011. He further submitted that the Honourable AT,SRB while deciding the matters of MCB Bank Limited and Allied Bank Limited has not considered the facts as discussed and decided in the most earlier decision of the AT, SRB in the case of M/s. Zarai Taraqiati Bank Limited (Justice® Nadeem Azhar Siddiqui) dated: 16-01-2016 in which the other services were considered as taxable under tariff heading 9813.4990 of the Second Schedule to the Act, 2011. He also placed his reliance upon the judgments of the Honourable AT, SRB in the cases in AT-66/2017 dated: 07-02-2018 (M/s Habib Bank Ltd v/s AC SRB) & AT-51/2017 dated 09-02-2018 (M/s Standard Chartered Bank Pakistan Ltd v/s AC SRB), wherein the services of bancassurance were decided as taxable. Furthermore, relying upon the concept of "service" & "services" he placed reliance on the judgment of Honourable Supreme Court in the case of Federation of Pakistan v/s Haji Muhammad Sadiq reported in 2007 PTD 67. Finally, submitted that, in previous decisions of AT, SRB, the judgment of the Honourable Sindh High Court in the case of JS Bank Vs. Assistant Commissioner -2, SRB CPD No D-4420/2014 dated 11th June, 2015 was not considered, which is relevant in the instant matter and also relevant to the provisions of the Act, 2011.

2) **Home remittances under PRI scheme:** As regards the services of Home Remittances under PRI Scheme, Mr. Zaheer Hussain submitted that, the SBP vide Circular No. 2 dated: 2009 has authorized some banks for implementation of payment system strategy for processing the transactions of Home Remittance, while processing the transaction of Home remittance, bank send SMS to remitter and beneficiary under the electronic system authorized by the SBP PRISM-RTGS (Real Time Gross Settlement) and the same electronic transfer of money is covered under the tariff heading 9813.4000 read with 9813.4600 (Transfer of money including telegraphic transfer, mail transfer and electronic transfer). He submitted that in the case of Citibank the then bench of Honourable Judges have given their opinion in para 12 that if charges born while providing the services of home remittances the same could be taxed under the tariff heading 9813.4000 read with 9813.4600 of the then Federal Excise Act, 2005. He further submitted that in earlier decisions of the Honourable ATSRB, in the cases of MCB Bank Limited & Allied Bank Limited observed that amount of marketing expenses born while processing the home remittances shall not be considered as fee, commission but the same are expenses which were reimbursed by SBP hence reimbursement could not be taxed. In relation to said earlier decisions, he submitted, at that time might be the facts and relevant documentary proofs were not available or the nature of transaction was not properly produced/discussed. However, in the instant matter, he submitted the Schedule of Charges of the bank as sufficient proof/evidences for determination of fee or commission born/earned. Under the Schedule of charges the bank has separately mentioned charges for both transactions i.e Home remittances under (PRI) Scheme and Home remittances other than PRI scheme. Wherein, it has been determined that the bank while providing the said services claims their service charges (fee, Commission) from SBP as per the applicable rates mentioned under the F.E Circular letter No.40 dated the November, 29th, 2000 read with EPD Circular letter No. 12 of 2015 (SBP has subsidize the



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charges of customer/beneficiary). Similarly, when the banks process the remittances other than PRI scheme, the charges so born directly recovered from the customer/beneficiary in accordance with the schedule of charges. Thus, the facts & documentary evidences submitted are much clear that in both situation charges have been *born* in shape of fee/commission & reimbursement thereof. Business model of both scenarios is drawn below for comprehension & clarity:

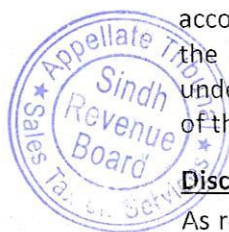
Inward Remittances		
Description	PRI Scheme	Other than PRI Scheme
Processing Charges	Bank to Customer Charges Nil, but claim from SBP (As per the Charges mentioned under SBP Circulars)	As per Schedule of Charges (Charges payable by the Customer)

3) **SBP Rebate:** Mr. Zaheer Hussain submitted that this transaction denotes the activity performed by the JS Bank against the services provided or rendered on account sale of SSC and other certificates (Special Saving Certificate & Defence Saving Certificates issued by the SBP). The JS Bank on behalf of State Bank sold the above mentioned certificates and after performing above activity, requested to SBP for the release of commission earned and accordingly SBP released the same amount of brokerage/commission earned. In support he submitted the copy of invoice in which the commission amount released by SBP confirms the activity performed by the JS Bank as proof. He submitted that this activity clarifies the activity performed by the JS Bank falling under the tariff heading 9813.4000 read with 9813.4200 (Brokerage/Commission) under the Second Schedule of the Act, 2011.

4) **Rebate from Foreign Correspondent Bank:** Mr. Zaheer Hussain submitted that this transaction denotes the activity performed by the JS Bank with the collaboration of the other correspondent bank. The correspondent banks provides services on behalf of another and facilitate wire transfers, conduct business transactions, accept deposits and gather documents on behalf of another financial institutions. The correspondent banks work through an agreement between a foreign and domestic bank where a correspondent account, usually referred to as Vostro and Nostro accounts. The correspondent banks typically involve the two banks establishing reciprocal accounts with each other. The correspondent banks earns share of fee/commission on the services provided rendered in relation to advising/confirming of L/Cs opened by banks, discounting of bills drawn under L/Cs, making foreign currency payments/remittance on behalf of customers of banks, maintenance of foreign currency accounts, maintenance of Rupee accounts, collection of bills both documentary and Clean. While providing the aforesaid services, the bank receives the commission from their correspondence banks and the same is taxable under the tariff heading 9813.4000 read with sub headings thereof and also read with section 9 of the Act, 2011.

Discussion on Tariff Heading:

As regards, the question regarding no relevant sub-tariff headings mentioned under the Order-in-Original. He submitted that at the time of show-cause notice proceedings there was no separate breakup of services available however the intention & interpretation of legislation are much clear that all the services provided or rendered by the banking companies in relation tariff heading 9813.4000 and sub-headings thereof are covered under the main heading 9813.4000 and accordingly the same was mentioned. Further submitted that, for the sake of arguments, if the separate sub-tariff headings were not mentioned under the Order-in-original, then any

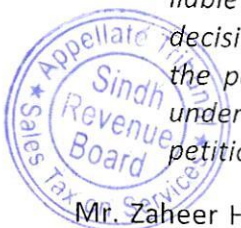
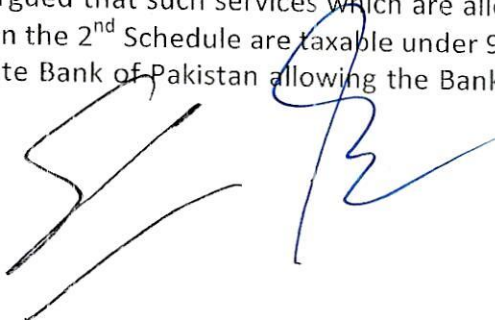


procedural lapse does not impact on the chargeability of tax and also the procedural law does not impact on responsibility of the registered person for the payment of due tax. As far as the plea of the learned counsel that no specific tariff heading are mentioned under the Second Schedule other than the tariff heading 9813.4990 which could be applied on all disputed services of the instant matter. The intention of the learned counsel shows that without plausible reasons he deems that the specific services are not mentioned under any tariff headings therefore the same he treats as exempted. As the learned AC SRB submitted that if the learned counsel of the registered person finds ambiguity under the interpretation of law and claims that the said services are exempted he must provide the plausible reasons in this regards. However, AC submitted that if any ambiguity while seeking exemption appears the same shall be decided in favour of the department and placed his reliance upon the Judgment of Honourable High Court in the case of Messers Petrosin Ravi Industries Limited Versus Custom, Central Excise and Sales Tax 2002 CLC 312: in which the Interpretation of Statutes were discussed that ---Tax charging provisions---Exemption granting provisions---Principles of interpretation---Ambiguity in tax charging provisions ought to be resolved in favour of assessee---Exemption granting provisions presupposes levy of duty, therefore, the burden of proof would squarely lie on the person claiming exemption, and while interpreting such provisions, Court would lean towards the Revenue rather than assessee. In view of the above citations, it has been determined that there is no ambiguity under the charging provisions of Section 2(28)(b), 2(79),3,4,8,9 of the Act,2011 read with rule 30 of the Rules, 2011. The tariff heading 98.13 specifies the services provided/rendered by banking companies and the same shall be read with the concept of "service" and "services" and the tariff heading 9813.4000 and sub-headings thereof.

Mr. Zaheer Hussain AC further submitted that the issue has been decided in favor of department in the case of Zarai Tarraqi Bank and the main issue of categorizing services not listed elsewhere has been since decided by the Honorable Sindh High Court in the case of J.S. Bank in C.P. No.4420 decided on 11.06.2015. He cited the relevant part of the judgment as under.

"4. Sub-sub Tariff Heading 9813.4990 clearly states "other services not specified elsewhere". This sub-sub Tariff Heading is to be interpreted in the light of the above referred judgment of the Honorable Supreme Court. Hence any service which the petitioner provides but is not specifically mentioned under any sub-sub Tariff Headings of sub-Tariff Heading 9813.4000 would also be subject to sales tax by virtue of sub-sub Tariff Heading 9813.4990. It would, however, be open to the petitioner to establish before the competent Authority that certain services which it renders and otherwise liable to sales tax are exempt under any law. let the competent Authority give its decision on the impugned show cause notice after giving a fair opportunity of hearing to the petitioner with regard to any exemption to which the petitioner may be entitled under any law or any instrument having the force of law. With these directions, this petition stands disposed of."

Mr. Zaheer Hussain AC also referred to para (1)(0) of Part II of Banking Companies Ordinance 1962 in which all banking companies are also allowed to do such forms of business as the S.B.P. may specify. He argued that such services which are allowed by the Banking Ordinance but not specifically listed in the 2nd Schedule are taxable under 9813.4990 (others). He also referred to a notification of State Bank of Pakistan allowing the Banks to render bancassurance services. He



relied on the judgment of the Tribunal (Division Bench II) in the case of Habib Bank Limited and Standard Chartered Bank.

5. After hearing both the sides our findings are as under.

6. Most of the issues except the issue of foreign exchange gain on remittance by Western Union have already been resolved and decided by this Tribunal in the appeals of Allied Bank Limited, followed in Silk Bank and MCB Bank Limited, in ratio decidendi of the judgment of Honorable Sindh High Court in the case of Citi Bank Ltd., cited as 2014 PTD 284 and the Honorable Supreme Court of Pakistan in the case of Habib Safe Deposit Vault cited as 2016 (113) Tax 61 (SC Pak).

7. In these judgments the issues are decided as under.

7.1. (i) Bancassurance (ii) State Bank rebate and (iii) rebate from foreign exchange.

8. In the case of ABL the Tribunal in its order dated 28.08.2017 decided these issues as under.

"18. After going through the argument of both the sides our observations are as under:

18.1. Sindh Sales Tax is leviable on the services and not on service provider. Section 3 puts the definition of taxable services as under.

"A taxable service is a service listed in the Second Schedule of this Act".

18.2. Section 8 provides the scope of tax and is a charging provision, again with reference to the value of a taxable service at the rates specified in the Schedule in which the taxable service is listed."

18.3. Service or services, as defined under section 2 (79), means "anything which is not goods and shall include but not limited to the services listed in the First Schedule of this Act".

18.4. From the above it is clear that it is a service which is aimed to be taxed and covers under the scope of tax finds place in the definition chapter as well. It means that it is not the service provider who is taxable, without reference to any specific reference to a service. It is noted that in all the main headings of Second Schedule the names of service providers have been listed. It does not mean that a service provider such as a bank would become taxable on all services rendered by it under H.S code 98.13. It also means that not all, but only such services fall under tax net which are enumerated under H.S. code 98.13 under sub-headings

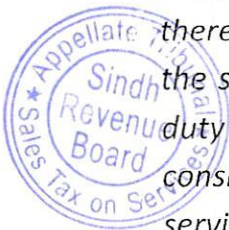


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and sub-sub-headings which are specific in nature. If there was no need for specific classification under general tariff headings it would be far more convenient for a taxation officer to tax all services rendered by a bank or any other service provider.

18.5. In the judgment of Citi Bank the Honorable Sindh High Court has held the same view as under:

The crux of the Tribunal's findings has been emphasized. (The point with regard to Rule 40 was not pressed before us). It is to be noted that the Appellate Tribunal did not identify any specific sub-heading to which "insurance commission" could be related. The key question is whether the relevant act, i.e., "facilitating the [applicant's] employees" to obtain insurance was a "non-fund banking service" that came within any of sub-headings of Heading No.98.13? It is clear that the sub-headings specifically in relation to insurance were all subordinate (sub-sub-) headings of a sub-heading (9813.1000) which related only to "an insurer, including a reinsurer". Since the applicant was neither, these headings obviously did not apply in relation to it. None of the other sub-headings were at all applicable to the putative service in question. It may also be noted that some of the sub-headings in Heading No.98.13 were described as "other". This is in fact a common device, to be found abundantly in the HS System in its various chapters. Some of these are independent sub-headings, which operate in their own right, but others are merely subordinate to other sub-headings. As learned counsel for the applicant pointed out (correctly in our view) all the "other" sub-headings in Heading No.98.13 were in fact subordinate (i.e., sub-sub-) headings, which were linked to various sub-headings, none of which was relevant for present purposes. In our view therefore, "insurance commission" did not come within the ambit of any of the sub-headings of Heading No.98.13 and hence was not liable to excise duty in terms of Entry 8. In the circumstances, it is not necessary for us to consider whether or not this type of transaction was a "non-fund banking service".



In the case of Citi Bank the Revenue attempted to charge the service provider on the ground that there was no specific service mentioned under code 98.13.

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18.6 The judgment of Supreme Court also confirms this point of view from a different angle. In the case of *Habib Safe Deposit Vault*, reported as 2016 (113) Tax 61 (S.C. Pak) the Apex court maintained that Habib Safe Deposit Vault was not a banking company and as such not specifically falling under code 98.13. However, since its services were being rendered as of Safe Deposit Lockers and Safe Vaults specifically fall under code 9813.4900 and 9813.4910, it was held that irrespective of the fact that Habib Safe Deposit Vault was not a banking company, only because Safe Deposit Lockers and Safe Vaults were taxable services under the provisions of Section 3 and 8 read with 2nd Schedule these were rightly taxed, under Code 8913.4900 and 9813.4910.

18.7 The learned AR has rightly argued that as held by the Supreme Court there should be a specific entry for the charge, whereas in this case (ABL) there is no specific entry for items that have been taxed. The code 9813.4000 applied by the AC-SRB is incomplete and is unspecified:

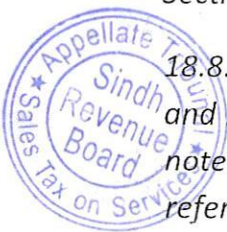
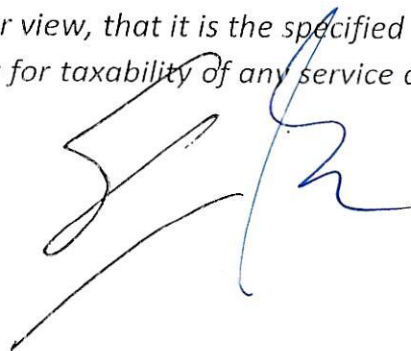
9813.4000 - Services provided or rendered by the banking companies in relation to:

In the 2nd Schedule this phrase ends with the colon (:) and is followed by various sub headings and codes thereof. But the impugned order is silent about as to what services the AC is going to tax in relation to: And since none of the three services under dispute is covered under code 98.13 or under sub-sub-headings of 9813.4000 the order is itself redundant as it is silent after mention of functions of a services provider but not mentioning of any service even listed under 9813.4000. The concluding part of the impugned order in original is:

“in the light of foregoing discussion it is held that the services amounting to Rs.285,018,976/- are liable to Sindh Sales Tax @ 16% under the provisions of Section 8 read with tariff heading 9813.4000 and its sub headings.”

18.8. While the AC has not specified any services or sub headings of 9813.4000 and has left it open to the assumption of any one about the specific headings it is noted that a sub heading 9813.4900 also relates to “Safe Deposit Vault”, which is referred by AC-SRB in general remarks but not a word on its chargeability, if any.

18.9. Our view, that it is the specified service enlisted in the 2nd Schedule which is necessary for taxability of any service and not the enlistment of service providers,



finds strength from the judgment of the Honorable High Court in Citi Bank as it held that:

Para 8 "The primary submission by the learned counsel for the department, namely that it was the description in the principal heading that was operation cannot be accepted. This description was in the following terms:

98.13 Services provided or rendered by banking companies, insurance companies, cooperative financial societies, modarabas, musharikas, leasing companies, foreign exchange dealers, non-banking financial institutions and other persons dealing in any such services."

"It will be seen that this description only listed the persons who were to provide services enumerated under Heading No.98.13....."

"The attempt by the learned counsel to conclude from the enumeration of the persons that all the services provided by them were included in Heading No.98.13 cannot be accepted. This would render otiose the listing of specific services in the various sub-headings".

18.10. The case before the Honorable High Court of Sindh was identical with that of the present case of ABL before us. In the case of Citi Bank NA the department imposed F.E.D. under F.E. Act, 2005 on three services which were all "non-fund banking services" namely "insurance commission", "merchants discount on credit cards" and "commission received from SBP" on speedy cash home remittances. At least two of these services have been rendered by ABL as well and are subject matter of this appeal. Since the HS code of Customs Tariff and subsequently of F.E. Act, 2005 has been adopted for Sindh Sales Tax 2011, the provisions of both law are mostly para material. The cited judgment of the Honorable High Court of Sindh is on all fours with this case.

18.11. With regard to the commission earned on providing reference or facilitation of insurance companies it was rightly argued by the learned counsel that since the appellant is a banking company and incorporated as such it cannot indulge in the insurance business, nor it is an insurance company. Thus the Honorable High Court held that, "in our view therefore "insurance commission" did not cover within the ambit of any of the sub headings of Heading No.98.13, and hence not liable to excise duty in terms of entry 8."



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18.12. With reference to commission on "speedy cash house remittance" the Honorable High Court has taken the same view and finally held that, "we conclude that in respect of all three types of transactions the applicant had no liability to pay Federal Excise Duty in both the first and second periods."

18.13. The learned AC-SRB has cited the judgment of Honorable Supreme Court of Pakistan referred as (2016)(113) Tax 61 (S.C. Pak) in the case of Habib Safe Deposit Vault and has argued that in the light of the decision of the Honorable Supreme Court case of any service provider even if not specifically mentioned under any tariff heading would be subjected to tax, once the service is taxable. In its judgment the Supreme Court held that Habib Safe Deposit Vault, even if it was not a banking company, as discussed only at the stage of appeal before the Honorable Supreme Court, would have to pay S.S. Tax on the services rendered under the heading "Safe Deposit Locker" – Code 9813.4900 and "Safe Vault" code 9813.4910. In the said case initially the appellant Habib Safe Deposit Vault (Pvt.) Ltd. was held liable to pay SST as it was treated as a banking company. Even up to the level of reference before the High Court the appellant was treated as a banking company which it was not. However, during the hearing of appeal the Supreme Court held that it was not a banking company, yet it was covered under code 98.13 as, "other persons dealing in any such services". The services it referred were enumerated under heading 98.13 (9813.4900 and 9813.4910). These include the above two services rendered by this appellant. (emphasis supplied)

18.14. The learned counsel on the other hand cited the judgment in support of his argument. It was argued that in the case of Citi Bank NA there was no dispute about the service provider which was a Bank and specifically covered under HS Code 98.13. The dispute was with regard to three non-fund banking services rendered by the bank and which did not find specific place in 2nd Schedule.

18.15. In the case of Habib Safe Deposit Vault the Honorable Supreme Court has also endorsed the same principle that it is the service which is taxable under sections 3 and 8 of the Act if it is listed in 2nd Schedule. So the two services namely Safe Deposit Lockers (9813.4900) and Safe Vaults (9813.4990) which are listed in the Second Schedule were held to be liable to tax, irrespective of the fact that the services provider was not a bank and was an ordinary private limited company. The core issue whether service is taxable even if it is not listed in the Second



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Schedule and whether it is the service provider or the Service which is ultimately taxable has been decided by both the courts in the same direction that it is the service which is taxable if listed in 2nd Schedule.

18.16. Here we agree with the learned counsel that while the judgment of the High Court of Sindh in the case of Citi Bank NA is on all fours with the case of appellant, the judgment of the Supreme Court of Pakistan in the case of Habib Safe Deposit Vaults confirms to the same principle and is not in violation in any way as the departmental officer has argued from time to time.

20. Thus following the judgment of the two Honorable Courts as discussed above, we hold that the three services which are the subject matter of this appeal were not liable to S.S.T during the period under appeal. The impugned order as well as order-in-appeal both are set aside.

- 7.2. The issue of home remittances as well as bancassurance is decided by the Division Bench of the Tribunal in the case of MCB in AT-20/2017. It may be noted that as there was a difference of opinion the matter was referred to the 3rd Member, which in this case is the Chairman Appellate Tribunal. Finally the issued was decided by the Appellate Tribunal, SRB vide its judgment dated 16.03.2018 as under.

“It further states that performance based scheme has been developed to encourage overseas entities to enhance marketing efforts at origination and Government of Pakistan shall reimburse marketing expenses through State Bank of Pakistan and the said scheme has been subject to certain conditions laid therein. The purpose clearly shows is to encourage remittances through official banking channels. In view of the preceding discussions we do not find any reason to treat Home Remittances as a taxable service. The appeal on this issue is allowed.

“18.4. From the above it is clear that it is a service which is aimed to be taxed and covers under the scope of tax finds place in the definition chapter as well. It means that it is not the service provider who is taxable, without reference to any specific reference to a service. It is noted that in all the main headings of Second Schedule the names of service providers such a bank would become taxable on all services rendered by it under H.S Code 98.13. It also means that not all, but only such services fall under tax net which are enumerated under H.S Code 98.13 and under sub-headings and sub-sub-headings which are specific in nature. If there was no specific classification under general tariff headings it would be far more convenient for a taxation officer to tax all services rendered by a bank or any other service provider.

“It is worthwhile to mention here that the bank is not providing insurance service. The bank only introduces its client to insurance company and earned some commission. The service of insurance was provided by the insurance company and they charge / collect



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tax from the policy holder and depositing the same with SRB. The Sindh Sales Tax on Services was levied VAT mode and while issuing insurance policy the insurance companies passed on the tax burden to the policy holder. If the bank is liable for to pay tax on bancassurance. The bank will also pass the burden to its clients / policy holder and this amount to double taxation."

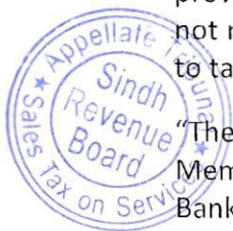
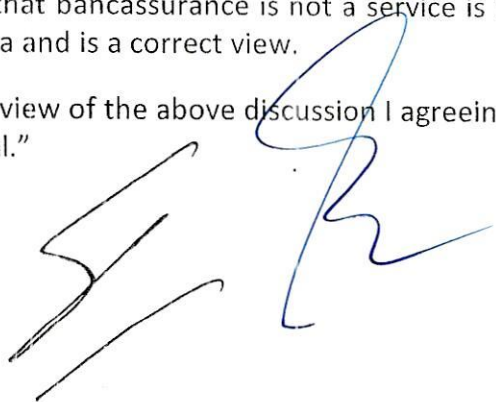
In para 12 of the judgment of the AT in the case of MCB Bank there is reference of difference of opinion between the Judicial Member and the learned Technical Member on the issue of Bancassurance. However, there was no difference of opinion on the issue of home remittance. The issue was resolved as the matter was referred to 3rd Member, the Chairman Appellate Tribunal whose judgment is available on pages from p-21 to 36, of the judgment with reasoning as under.

"20. Appellant's contention is that since the bancassurance is not a listed service the same cannot be taxed. The contention of the department is that all services provided by the banks are taxable and the services not specifically listed are covered under Tariff Heading 9813.4990 (other services not specified elsewhere). It is true that bancassurance is not a listed service. The department has taxed the bancassurance under Tariff Heading 9813.4990 (other services not listed elsewhere). The tariff heading was added to the second schedule vide the Sindh Sales Tax on Services (amendment) Ordinance XIV of 2011 made on 1st November, 2011. By providing bancassurance service neither the appellant provides a banking service nor an insurance service. The appellant simply introduced its clients to insurance company and the insurance company issued policy and charged Sindh Sales Tax on Services if applicable and paid some amount of commission to the bank from the premium on which Sindh Sales Tax was already paid. In case the bank is liable to pay Sindh Sales Tax on commission received from insurance company the bank will again charge the tax upon the policy holder / its client and in this was the policy holder / client has to pay tax twice on same service."

"21. As per section 3 of the Act of 2011 a taxable service is service listed in the second schedule to the Act. Admittedly the bancassurance is not a listed service. The contention of the learned AC that all services provided or rendered by the bank are taxable has no force and if the same is accepted the listing of specific services in the second schedule of the Act becomes redundant. If the intention of the legislature is to tax all services provided or rendered by the bank the listing of specific services in second schedule are not necessary and one liner "all services provided or rendered by the bank" is sufficient to tax the services."

"The result of the above discussion is that the view expressed by the learned Judicial Member that bancassurance is not a service is in consonance with the judgment of Citi Bank supra and is a correct view.

"25. In view of the above discussion I agreeing with the Judicial Member, hence allow the appeal."



9. The main thrust of the argument of the learned AR has been that while there are specific tariff heading available any services cannot be taxable under general clauses, and that tax cannot be levied by applying general omni bus clause like 9813.4990 (Other services not specified elsewhere). In this respect the land mark judgment of the Honorable Sindh High Court in the case of Citi Bank and the judgment of Supreme Court of Pakistan in the case of Habib Safe Deposit Vault were cited and followed. The learned AR also cited the latest judgment of Supreme Court of Pakistan in the case of Pakistan Television Corporation, in Civil Appeal No.1509 of 2016, an unreported judgment dated 23.10.2018. The relevant part of the judgment has been quoted supra.

10. The issue raised in the appeal of the department No.AT-99/2016 i.e. foreign exchange gain on remittance by Western Union has been adjudicated by the Commissioner (Appeal) as under.

"In case of home remittances the learned counsel for the Citibank submitted that the activity in question finds relevance with the tariff headings 9813.6000 of the Federal Excise Act, 2005. But the Honorable Court did not agree with the Appellant. I have gone through the 2nd Schedule generally and find that the rate of tax at 19.5 & 13% has been prescribed against the main heading 98.12 and 98.13 respectively, but not against all other main heading of the 2nd Schedule of the Act, 2011. This was not the case in Federal Excise Act, 2011. Further to this, the listing under subheading 9813.4000 ends up with the heading 9813.4990 with description "other services not specified elsewhere" in the present case. The contention of the Appellant was that tariff heading 9813.4990 is subservient to the heading 9813.4900 and is not subordinate to subheading 9813.4000. In this regard he relied upon the above Judgment. I have carefully studied the Judgment and came to know that the Honorable Court has not specifically discussed the entry "others" to tax the activity involved therein but has generally discussed the same as being used in the HS Code System and held that some of them are "others" being main heading and somewhere those are subordinate subheading to main headings. The main subheading 9813.4000 reads as "services provided or rendered by banking companies in relation to:". Below the same are listed the banking services in their very kind. Right above the subheading 9813.4990 is the subheading 9813.4900 with description "safe vaults". The services below mentioned under 9813.4990 against subheadings 9813.5000 and 9813.6000 are the services in relation to banking services but may not be called the banking services as such. The "save vaults" is a specific activity and there cannot be any more services relating to or similar to the "save vaults". It is further to be seen that the legislature is never short of words. If this was the case of description could use the words as other save vault or similar services not specified elsewhere. The description as read in the current form is general in nature. Therefore, to my humble opinion the same is not subordinate to heading 9813.4990 but is a sub-subheading to subheading 9813.4000. Further to this in order to see the relevance of the services in question with the listing given it will be seen that description guarantee, brokerage, letter of credit, bills of exchange, bank guarantee are the services which are transacted for the accounts holders (may it be the bank or individual) in order to facilitate a 3rd party. And so is the case in all the services under question. Therefore, to my humble opinion the services find



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relevance with the services listed there-above, the sub-subheading 9813.4990 is not subservient to the upper heading but is subservient to main subheading 9814.4000. And the services are taxable except the FX gain on Western Union Remittances mentioned at sub-para b of para 3. With utmost respect and due deference to the findings of the Honorable Sindh High Court the question under their Lordship's was that whether the services of banc-assurance, home remittance and merchant discount find relevance with the tariff heading 9813.5000 and 9813.6000. Neither the tariff heading 9813.4990 existed in the entry 8 of the Federal Excise Act, 2005 nor the relevance of the activities was under the discussion with the list there-above. In view of the above, with due deference and utmost respect the Judgment of the Honorable Sindh High Court is distinguishable in this case.

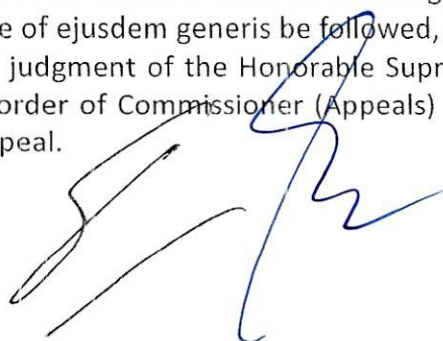
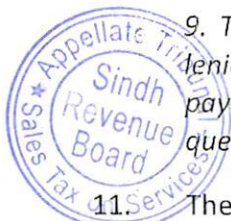
6. Further the contention of the Appellant was that the entry 9813.4990 was included from November, 2011 but the tax has been calculated from July, 2011, it is required to be seen that from 1st July, 2011 to 31st October, 2011 the tariff heading 9813.4990 did not exist. Therefore, mere relevance of the services with the listed services does not amount to tax the same and the Appellant shall not be liable to pay the tax on the services upto 30th September, 2011.

8. In view of the given reasons hereinabove, the OIO is upheld to the extent of chargeability of tax on the following services calculable from 1st November, 2011 onward to the end of the periods in question herein, alongwith the default surcharge to be calculated at the time of payment. Whereas the OIO is hereby set aside to the extent of receipts of FX gain on Western Union Remittances:-

Banc-assurance
Home remittance under Pakistan Remittance initiative (PRI) scheme
SBP rebates
Rebate from foreign correspondence bank
Totaling

9. The OIO is hereby upheld to the extent of penalties as well. However, an extreme leniency is shown and the Appellant shall only be required to pay 50% penalty if the payment of tax duly calculated from 1st November, 2011 to the date of period in question is made within 15 days of the receipt of this Order."

11. The receipts under this head are assessed to SST under tariff heading 9813.4990 (Others services not specified elsewhere) as no specific clause was available. The Honorable Supreme Court in its judgment in P.T.V. Corporation decided on 23.10.2018, quoted supra, has rightly held that if any service which is liable to be charged to tax under general clause 9813.4990 at least the principle of ejusdem generis be followed, which is lacking in this case. Thus in the ratio decidendi of the judgment of the Honorable Supreme Court in the case of P.T.V. Corporation we confirm the order of Commissioner (Appeals) dated 10.10.2016 on this issue and dismiss departmental appeal.

12. The decisions of this Tribunal in the cases of Allied Bank v. Assistant Commissioner and MCB Bank Limited v. Commissioner (Appeals) have conclusively decided the taxability of services under adjudication before us. While in Allied Bank, this Tribunal held that the services of Bancassurance, Rebate from State Bank, and Rebate from Foreign Correspondent Banks fell outside the scope of the Sindh Sales Tax on Services Act, 2011, the decision of the three members Bench in MCB Bank Limited clarified that the service of Home Remittance was not taxable under the Act, while also reaffirming the decision in Allied Bank in respect of the non-taxability of Bancassurance.

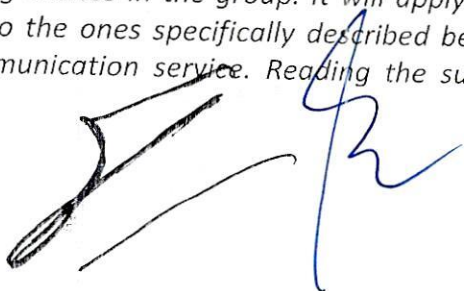
13. The Tribunal in its decision in the cases of Allied Bank and MCB Bank Limited was guided by the Sindh High Court's decision in Citi Bank N.A. v. Commissioner Inland Revenue (2014 PTD 284) in declaring that Tariff Heading 9813.4990 cannot be read to include all services provided by banks as taxable. The principles laid down in Citibank N.A. have further been recently upheld by the Supreme Court of Pakistan in Pakistan Television Corporation Ltd. v. Commissioner Inland Revenue (Legal) (Civil Appeal No.1509 of 2016). The operative paragraph of the Supreme Court's judgment is reproduced below:

"12. The submission of the counsel for the respondent also runs counter to the structure of the PCT. As observed in Messrs Citibank NA Vs. Commissioner Inland Revenue (2014 PTD 284):-

This is based on and is almost identical to the Harmonized Commodity Description and Coding System ('HS System'), which has been agreed upon under an international convention and which is regulated by the World Customs Organization. The HS System is of course concerned with goods, and it comprises of 97 chapters (with one chapter, 77, being left "blank" for possible future use" wherein all manner of goods are listed and categorized. The Pakistan Customs Tariff faithfully reproduces and gives effect to this system. In addition, the HS System allows two final chapters (i.e. 98 and 99) to be used for national purposes and Pakistan has utilized Chapter 98 of "services". Even a quick glance shows that Chapter 98 replicates the system of classification adopted for goods under the HS System. Now, the chapters of the HS System are preceded by certain "General Rules for the interpretation of the Harmonized System" ("General Rules"). These rules are incorporated in the Pakistan Customs Tariff and therefore have the force of law. although the rules are concerned with goods, in our view they may, subject to suitable adaptation, also be used for the purposes of Chapter 98. This is so because of the close correspondence between the classification system under the HS System and that used in Chapter 98. Rule 6 of the General Rules has been understood to mean, inter alia, that in those headings under which sub-headings are to be found, the classification is to be on the basis and in terms of the sub-headings.

[Emphasis Supplied]

13.... The sub-heading "Others" is, therefore, to be read 'ejusdem generis' with the preceding entries in the group. It will apply to and covers only such services which are similar to the ones specifically described before it. It cannot include every conceivable telecommunication service. Reading the sub-heading "Others" to include all kinds of



telecommunication services would render all the specific sub-headings otiose. Such an interpretation being clearly flawed cannot be sustained."

14. Thus in light of the decisions of this Tribunal in Allied Bank and MCB Bank Limited and the judgments in Citibank NA and Pakistan Television Corporation Ltd., we hold that Tariff Heading 9813.4990 cannot be interpreted as including all services provided by the Appellant, Bank including services of Bancassurance, Home Remittance through PRIS, State bank Rebate, Rebate from Foreign Correspondent Bank, and FX Gain on Western Union Remittance.

15. In view of the above findings the appeal of the tax payer is allowed, whereas the departmental appeal is dismissed. The penalties imposed with the order under section 23 are, in consequential, effect also deleted.

16. Before parting we want to express our thanks for the learned counsels of both the sides who assisted the Bench in arriving the decision. We in particular appreciate Mr. Zaheer Hussain, AC and his team for their elaborate arguments and assistance to the Bench.

17. Both the appeals are disposed of as above.

(Muhammad Ashfaque Balouch)
MEMBER JUDICIAL

Karachi

Dated :18.04.2019

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

Copy for information to :-

3. The Commissioner (Appeals), SRB, Karachi
4. Office Copy.
5. Guard File.


(Agha Kafeel Barik)
MEMBER TECHNICAL

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REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on 19/04/18


Registrar

Order Dispatched on 19/04/18


Registrar