

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

APPEAL NO. AT-51/2017

M/s Standard Chartered Bank (Pakistan) Ltd. Appellant

Versus

1. Commissioner (Appeals), SRB, Karachi
2. Assistant Commissioner-2, SRB, Karachi Respondents

Mr. Mahmood Bikiya, ACA For the Appellant

Ms. Lubna Najmi, Assistant Commissioner (Unit-2), SRB, Karachi For the Respondents

Date of hearing 02.02.2018

Date of Order 09.02.2018

ORDER

Razia Sultana Taher: This appeal has been filed by the Appellant challenging the order in appeal No.107/2017 dated 17th August, 2017 passed by the Commissioner (Appeals) in appeal No.217/2016 and appeal No.218/2016 conforming the order in original bearing No.437 and No.463 of 2016 dated 2nd and 3rd June, 2016 passed by the Assistant Commissioner-2, SRB, Karachi.

2. The concerned Assistant Commissioner in the order in original No.463 of 2016 observed and concluded that the appellant are engaged in providing / rendering banking services covered under tariff heading 9813.4000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as SSToS Act, 2011). Scrutinization of the available record showed that the appellant did not pay Sindh Sales Tax amount of Rs.33,305,471/- on taxable services of Bancassurance for the tax period from January, 2015 to May, 2016. That reading through the judgment of the Honorable Court enabled to move towards the decision, whether the tariff heading 9813.4990 of 2nd Schedule of the SSToS Act, 2011 is a sub-heading of main heading 9813.4000 or is sub-sub-heading of sub-heading 9813.4900 and humbly held the view that tariff heading 9813.4990 cannot be sub-sub-heading of 9813.4900 and further held that 9813.4990 is sub-heading to main heading 9813.4000 and it makes reference to the other services rendered by the bank company.

3. The respondent held that the appellant provided the services of bancassurance and liable to pay Sindh Sales Tax amount of Rs.33,305,471/-. The said amount have been paid by the appellant and no penalty was imposed against the appellant under section 43(3)(6d) and (II) of

the SSToS Act, 2011 but ordered the appellant to pay default surcharge under Section 44 of the SSToS Act, 2011 amounting to Rs.2,216,281/- on the Sindh Sales Tax amount of Rs.33,305,471/-.

4. The order of the Assessing Officer was challenged by way of filing appeal before the Commissioner (Appeals) SRB who dismissed the appeal and upheld the order in original.

5. During the course of hearing on 31.01.2018 Mr. Mahmood Bikiya appellant's representative submitted that there is only one issue i.e. receipt of 'bancassurance'- Under SSToS Act, 2011, a service is chargeable to Sindh Sales Tax only if it is listed in the 2nd Schedule to the SSToS Act, 2011. Accordingly the services which are not listed in the 2nd Schedule are not chargeable SST because the 2nd Schedule to the SSToS Act, 2011 deals with the taxable services and section 3 is relevant which reads as "a taxable is a service listed in the 2nd Schedule" – There are various tariff headings listed under the 2nd Schedule of the Act but the relevant tariff heading relating to banking companies is 9813.4000 and the subtariff headings under the said tariff heading 9813.4000 reads as "services provided or rendered by banking companies relation to: After the colon, there are 9 sub tariff headings and two sub sub tariff headings. According to the understanding of the appellant, the order has been passed under tariff heading 9813.4990 which is sub tariff heading of 9813.4900. The appellant's counsel posed a question, Can the sub sub tariff heading 9813.4990 extend beyond the sub tariff heading 9813.4900? In support to his argument, the appellant's counsel relied upon the judgment of the Sindh High Court 2014 PTD 284 – relevant paragraphs are 18 to 20 at pages 295-297. The scheme adopted by Sindh Sales Tax authority is similar to the Harmonized Coding System used under the Customs Law, Chapter 98 deals with services and therefore all the services listed under 2nd Schedule of SST law start with the digit 98. It represents Chapter 98, the tariff heading relating to banking company i.e. 9813.4000.

98 represents services

13 pertain to Financial services

.4000 represents the services of banking companies

It runs as 4100, 4200, and so on till 4990 – He submitted that the scope of tariff heading should be considered from the digits of the tariff heading assigned to a particular services. The scope of 9813.4990 should not extend beyond the services mentioned under tariff heading 9813.4900.

The appellant's counsel further argued that description mentioned under tariff heading 9813.4990 'other services not specified elsewhere' should not extend beyond the services mentioned under tariff heading 9813.4900 which are 'safe deposit locker'. In support, appellant's counsel cited decision of Appellate Tribunal SRB in Appeal AT-93/2014 in the case of BMA Asset Management Company relevant paragraphs are 14 and 15 at page 6 and counsel added that the scope of taxable services relating to banking companies is limited to tariff heading 9813.4000 and there is no specific heading under tariff heading 9813.4000 which deals with bancassurance. The counsel continued that even if it is assumed that tariff heading 9813.4990 is wide enough to cover services beyond tariff heading 9813.4000 than the



remaining tariff heading from 9813.4100 to 9813.4800 would become redundant. In any case not withstanding to the main argument, the tariff heading 9813.4990 has been incorporated and made taxable effective from 1st November, 2011 therefore the receipts relating to 1st July, 2011 to 31st October, 2011 cannot be chargeable to tax under the tariff heading 9813.4990 as held in Appellate Tribunal SRB order in appeal No.AT-165/15 in the case of MCB Bank Ltd. v/s SRB relevant para 8 at page 5 and in which it has been mentioned tariff heading 9813.4990 will operate effective from 1st November, 2011. The counsel submitted that there is an observation that there is a tariff heading 9824.0000 relating to "General Insurance agents" the said tariff heading has so far not been taxed under the SSToS Act, 2011 and added that default surcharge has been levied by the Assistant Commissioner which is consequential to the main issue. In here there was no deliberate or willful default on the part of appellant. Therefore no default surcharge should be levied in the instant case. On this ground, the counsel relied upon the following judgments

- a) PTD 2006 1131 SC on S.T. relevant page No.1136
- b) AT-129/2015 in the case of Icon Securities (Pvt.) Ltd. relevant para is 10
- c) AT-72/2016 in the case of Resource Marketing Consultant pages 11 to 13.

Same principles discussed that mens rea was not involved hence default surcharge is not applicable. Lastly added that the Assistant Commissioner did not provide proper opportunity at assessment level. Same arguments apply to AT/52/2017 – where the tax period is Jan 2015 to May 2016. Hearing for argument of Respondent and counter argument of the appellant fixed on 06.02.2018.

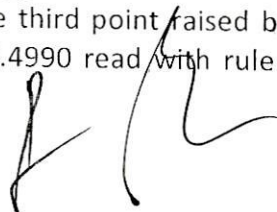
7. At the time of hearing on 06.02.2018, Ms. Lubna Najmi Assistant Commissioner submitted that the services of bancassurance given by the appellant covers life insurance, health, fire, theft, all types of insurance are covered. The bank gives the services to insurance companies. The appellant has relied upon the judgment of Honorable High Court of Sindh in M/s Citi Bank 2014 PTD 284 and the said judgment has been relied upon by the respondent as well. The A.C. contended that in the cited judgment, the Federal Tribunal did not connect 'insurance commission' with the tariff heading in the group of banking services. That there is no discussion or judgment on bancassurance being taxable service. It is held in this judgment that under Federal Excise Act 2005 all the 'others' were subservient to their instant / immediate above tariff heading. In the said judgment, the Honorable High Court discussed at 17th line of paragraph 20 that all the 'others' mentioned in the Schedule of taxable services are not dependent to the immediate above headings. The headings and subheading in the SSToS Act, 2011 and Federal Excise Act 2005 are different – Under Federal Excise Act 2005, there is no subheading like subheading 9813.4990 as in SSToS Act, 2011, it did not exist then in the Federal Excise Act, 2005. Whereas, under the SSToS Act, 2011 the legislature intended to make the subheading 9813.4990 independent for the said reason the words are "other services not specified elsewhere" – It is commonly known that the legislatures are never short with words and any word or phrase made part of legislation are to be given proper meanings as they are written.



The respondent argued that if the legislature had intended to make tariff heading 9813.4990 subservient to tariff heading 9813.4900 which reads as 'safe deposit lockers' then, they could have used the digit 9813.4920 and description be 'other services of safe deposit lockers not specified elsewhere'. The contention of the appellant that bancassurance are on 'receipts and not 'services'. The receipts are given against a transaction, receipt is a consideration given against services or goods. Now, whether the same have been given against services or goods. In the present case no goods are involved and under the provision of SSToS Act, 2011 it is clearly mentioned under section 2(35) in 2011 and (79) in 2015. Section 2(35) of the SSToS Act, 2011 which reads as "service or services includes, but is not limited to, the activities listed in Column II of the 1st Schedule to this Act read with Chapter 98 of the Pakistan Custom Tariff. And under Section 2(79) in 2013 reads as "service or services means anything which is not goods or providing of which is not a supply of goods and shall include but not limited to the services listed in the 1st Schedule of this Act. Now section 2(79) in 2015 reads as 'service or services' means anything which is not goods and shall include but not limited to the services listed in the 1st Schedule of this Act', hence the definition of services provided under SST Act, 2011 read with Rule 30 of the SSToS Rules, 2011 covers all the services provided by the bank to its customers. The respondent continued the argument submitting that the services of bancassurance provided by bank are covered under tariff heading 9813.4000 read with tariff heading 9813.4990 and rule 30 of the SSToS Rules, 2011. The tariff heading 9813.4990 is not deemed to be subordinate to tariff heading 9813.4900 and is independent and beyond the tariff heading 9813.4900. Furthermore, as regards Default surcharge submitted that the wording in section 44 reads as 'wilful or otherwise' thus the default surcharge is mandatory. No judgment on Section 44 of SSToS Act, 2011 has yet been passed by the Honorable Supreme Court and Honorable High Court. The contention of the appellant that the department / respondent did not provide sufficient opportunity of hearing is not a fair statement. The appellant was heard on both forum and the arguments have been addressed and in both the cases. The appellant have paid the principal amount hence, penalty had not been imposed in the two Appeal cases AT-51/207 and AT-52/2017.

8. The appellant's counsel Mr. Mahmood Bikiya in response submitted that the first argument of the Assistant Commissioner is reliance on a part of paragraph 20 of the judgment of Ms Citi bank 2014 PTD 284. It becomes clearer when read as a whole as, in paragraph 20 laid emphasis on 5th line which reads as "*some of these are independent sub headings which operate in their own right but others are merely subordinate to other subheadings. As learned counsel for the applicant pointed out (correctly in our view) all the other subheadings in heading No.98.13 were infact subordinate (that is sub-sub) headings which were linked to various subheadings none of which was relevant for present purposes. In our view therefore insurance commission did not come within the ambit of any of the subheadings of heading No.98.13 and hence was not liable to excise duty in terms of entry 8*". The counsel further contended that the law is to be applied as written and in specific manner in which tariff headings are to be applied which has already been explained in the previous hearing on 31.01.2018.

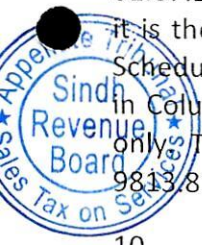
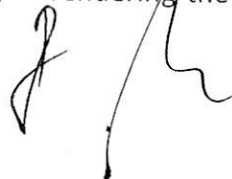
Furthermore, the counsel added that the third point raised by the Assistant Commissioner is the application of law 9813.4000, 90813.4990 read with rule 30 by virtue of these three, all



banking services are taxable. In rebuttal submitted that if the law is to be applied in such a manner than the remaining subheadings listed under 9813.4000 would become redundant. As regards to the definition of services under section 2 (35) and (79) of the SSToS Act, 2011, over a period of time. Even if for argument the contention of the Assistant Commissioner is assumed to be correct, the services covered under the SST laws were limited to "section 2 Clause 35 service or services includes but is not limited to the activities listed in Column II of the First Schedule read with Chapter 98 of the Pakistan Custom tariff". Since the receipt of bancassurance by the bank is not specifically listed in the 1st Schedule to this Act, therefore the same should not be covered under taxable service. As regards default surcharge – under SST laws as under section 44 – the judgment of the Tribunal passed in M/s Resource Marketing Consultants bearing Appeal No.AT-72/2016 and M/s Icon Securities bearing No.AT-129/2015 the precedent is available. The decision of Supreme Court in PTD 2006 1132, the default surcharge was leviable only when 'willful or deliberate'. The payment of Sindh Sales Tax in these two cases is not on ground that the appellant accepts the version of the respondent.

9. We have heard the learned representative of both sides. Firstly, it should be understood that linkage of the First Schedule to the SSToS Act, 2011, with Chapter 98 of the Pakistan Custom Tariff was ended by the Provincial Assembly of Sindh through the Sindh Finance Act, 2014, when the definition of the terminology "service" or "services", as given in section 2 of the SSToS Act, 2011, was changed and the reference to Chapter 98 of Pakistan Custom Tariff was omitted. Secondly, the definition under Section 2(35) of the SSToS Act, 2011 as it existed prior to 01.07.2014 and also under Section 2(79) of the SSToS Act, 2011 as it exists since 01.07.2014, expressly use the words that "service or services" "Include but not limited to the services listed in the First Schedule of this Act". Both the expressions "include" and "but not limited" clearly indicate that legislative intent that the terminology "service or services" are neither restricted to Chapter 98 of the Pakistan Customs Tariff (during the period from 01.07.2011 to 30.06.2014) nor restricted by the descriptions and tariff headings listed in the First Schedule to the SSToS Act, 2011. For the taxability of a service under the SSToS Act, 2011, one has to look into the definition of the terminology "taxable services" under section 2(43) of the SSToS Act, 2011 (as existing prior to 01.07.2014) and under Section 2(79) of the SSToS Act, 2011 (as existing since 01.07.2014) read with the provisions of sections 3 and 8 thereof. For the reasons stated above, it is the description of the services listed in Column (2) of the Tables in the First and Second Schedules of the SSToS Act, 2011 which have to be referred to and the tariff headings, as given in Column (1) of the aforesaid Tables, are obviously for the reference and statistical purposes only. This is also evident from the descriptions given against subheadings 9813.8000 and 9813.8100 where the descriptions against the said two subheadings are alien to one another.

10. Having examined as above, we now take up the case of "bancassurance" which although not defined in the SSToS Act, 2011, is popularly understood and marketed as insurance services provided or rendered by banking companies in an arrangement in which a bank and an insurance company join hands so that insurance policies are sold, using the bank media, to the bank clients. The service tax on such insurance, where leviable, are invariably paid by the concerned insurance / assurance company in the manner prescribed under the Act and the banking company engaged in providing or rendering the bancassurance services earns certain



commission on such of the bancassurance services as are provided or rendered by the bank. Such a commission is a charge for the bancassurance services provided or rendered by the banking company and, therefore, this constitutes the value of the taxable service in such case.

11. The judgment of the Honorable Supreme Court of Pakistan in Civil Appeal No.911 of 2015 is relevant in this case. The Honorable Supreme Court has held that *"in our opinion it is not without significance that the tariff heading 98.13 unlike some other tariff headings in the Second Schedule stipulates a rate of tax. The appellant's learned counsel's contention that confusion would occur if the said tariff heading and any tariff subheading prescribed different tax rates, is not correct, because, if a particular rate of tax is prescribed under a specific subheading which is different from the general rate of tax mentioned in the tariff heading, the rate of tax prescribed in the subheading would apply on principle that the specific excludes general; reference in this regard may be made to the cases of State v. Zia ur Rehman (PLD 1973 Supreme Court 49, relevant at page 89W) and Neimat Ali Goraya v. Jaffar Abbas Inspector / Sargeant Traffic (1996 SCMR 826 relevant at page 833B)".* The Honorable Supreme Court further held that *"even if the same were not mentioned therein it would not in itself exclude a person since the definition proceeds to state – but not limited to the services listed in the First Schedule"*.

12. There is no doubt that the banking company, in providing or rendering bancassurance services, is providing or rendering a service which is peculiar and specific to bank and is receiving some consideration (in the name of commission or charge) for provision of such services. Accordingly, this bancassurance services is covered by the description "services provided or rendered by banking companies" of tariff heading 98.13 of the First and Second Schedules to the SSToS Act, 2011. Whether classified under tariff heading 98.13 of the Second Schedule or under subheading 9813.4990 thereof, the bancassurance services by banking companies shall be covered by the terminology "taxable services" and levied to tax on the basis of commission or charges received by the banking companies in consideration of having provided or rendered such bancassurance services. It shall not be classified under tariff heading 9819.1300 under the description "Commission Agents" because 9819.1300 covers the general body of commission agents, while the commission or charges earned by the banking companies, specifically on account of provision or rendering of any service relatable to banks, shall be classified as under tariff heading 98.13 and / or the subheadings thereof. It is pertinent that even commission and brokerage of foreign exchange dealings is specified against subheadings 9813.6000.

13. For the reasons detailed in foregoing paragraphs and keeping in view the above cited judgment of the Honorable Supreme Court of Pakistan, we hold that bancassurance services provided or rendered by banking companies is a taxable services under the description specified against tariff heading 98.13 and that the appellant, providing or rendering such bancassurance services, is liable to pay Sindh Sales Tax on the taxable value of services i.e. the consideration (in the shape of commission or charges) received by the appellant for provision of such services.



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14. As the appellant have paid the adjudged amount of Sindh Sales Tax before the issuance of order in original, we hold that extreme leniency needs to be shown and we set aside the default surcharge amount of Rs.2,216,281/- imposed under Section 44 of the SSToS Act, 2011.

15. The impugned order in appeal is modified to the above extent as detailed in the preceding paragraphs.

16. Both the parties have submitted that same arguments are adopted in appeal case No.52/2017 of Standard Chartered Bank (Pakistan) Ltd. v/s Commissioner (Appeals), and other SRB.

17. The order in appeal case No.AT-51/2017 disposes of appeal case No.AT-52/2017 having identical facts, grounds and arguments except difference in amount of Sindh Sales tax and the tax period.



(Muhammad Ashfaq Balouch)
JUDICIAL MEMBER



(Razia Sultana Taher)
TECHNICAL MEMBER

Karachi

Dated:09.02.2018

Certified to be True Copy

Copies supplied for compliance:-

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

Copy for information to :-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) The Deputy Commissioner (Legal), SRB, Karachi.
- 5) Office Copy.
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