

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-66/2017

M/s Habib Bank Limited ..... Appellant

**Versus**

1/ Commissioner (Appeals), SRB, Karachi  
2/ Assistant Commissioner-6, SRB, Karachi ..... Respondents

Mr. Shabbar Zaidi, FCA alongwith  
Ms. Asra Rauf, FCA ..... For the Appellant

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

Date of hearing 23.01.2018  
Date of Order 07.02.2018

**ORDER**

**Razia Sultana Taher:** This appeal has been filed by the appellant challenging the order in appeal No.124/2017 dated 27<sup>th</sup> October, 2017 passed by the Commissioner (Appeals) in appeal No.73/2017 confirming the order in original No.165 of 2017 passed by the Assistant Commissioner-2, SRB, Karachi.

2. The concerned Assistant Commissioner in the order in original No.165 of 2017 observed and concluded that the appellant are engaged in providing / rendering banking services and had got voluntarily registered with Sindh Revenue Board under the 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 amounting to Rs.215,579,791/- on taxable services of Bancassurance for the tax periods from July 2011 to January 2017. The Assistant Commissioner explained that the period from July 2011 to February 2012 was not time barred under section 23(2) of the SSToS Act, 2011 as the same was amended vide Sindh Finance Act, 2016 and show cause notice given on 2<sup>nd</sup> March, 2017 was within the prescribed time (ii) Reading the judgment of the Honorable Court enabled to move towards the decision, whether the heading 9813.4990 of 2<sup>nd</sup> Schedule of the SSToS Act, 2011 is a sub-heading of 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-heading of 9813.4900 and that 9813.4990 is sub-heading to main heading 9813.4000 and it amply refers to the other services rendered by the banking company.



*[Handwritten signatures]*

iii) That judgment of the Honorable Appellate Tribunal, SRB in AT/93/2014 November 2016 was not applicable to the instant case as the appellant being a banking company and tariff heading 9813.8100 relates to services provided / rendered by Non-Banking Finance Companies and cited Judgment AT-51/2014 dated 16<sup>th</sup> January, 2016 in case of M/s Zarai Tarqati Bank Limited v/s Commissioner SRB. Wherein it was held that tariff heading 9813.4990 (other services not specified elsewhere) is the general tariff heading and any service not specified in tariff heading below 9813.4000 can be taxed under tariff heading 9813.4990.

iv) That appellant never provided data relating to Bancassurance, the argument of the appellant was dismissed and the appellant was ordered to pay SST amount of Rs.215,579,791/- along with default surcharge (to be calculated at the time of payment) under Section 44 of the SSToS Act, 2011 and penalty of Rs.22,145,870/- under Serial No.3 to the table under section 43 of the SSToS Act, 2011 and penalty of Rs.10,778,990/- imposed under Serial No.11 of Section 43 of the SSToS Act, 2011.

4. The said 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 11.12.2017, the learned counsel Mr. Shabbar Zaidi representing the appellant submitted that in the present appeal, there is only one issue and the said issue is common in the appeal case of Standard Chartered Bank and Muslim Commercial Bank. He submitted that in respect to ground No.1 to 3 – the receipt on account of bancassurance is non-taxable under SSToS Act, 2011.

As regards ground No.3, the period July, 2011 to February 2012, is irrespectively time barred under the law. The order is framed under Section 23(2) of the SSToS Act, 2011, the show cause notice is dated 2<sup>nd</sup> March, 2017. That under Section 23(2) of the SSToS Act, 2011 prior to the amendment it was 5 years, the amendment came in Sindh Finance Act, 2016, thus according to law the registered person case for issuance of show cause notice under Section 23(2) of the SSToS Act, 2011 got time barred under section 23(2) as stood before 30.06.2016. In support of the argument, the learned counsel of the appellant relied upon the decision of the Appellate Tribunal Inland Revenue reported as 2017 PTD (Trib.) 211 ..... Page No.212.

The learned representative of the appellant in respect to ground No.4 and 5 submitted that it pertains to tariff heading 9813.4990, is it relevant to the issue under consideration and the counsel raised the question whether the receipts can be made taxable under the tariff heading 9813.4990 in the present law. The tariff heading 9813.4990 was inserted in 1<sup>st</sup> November, 2011 which reads as

‘9813.4990 – other services not specified elsewhere’

The counsel further went to argue that the primary tariff heading is 9813.4000 – ‘Services provided or rendered by banking companies in relation to:

The rationale behind this heading provide the right to the legislature to tax the services provided by banking company. The question is whether the product heading which are generally harmonized code and that concept has been adopted from the custom tariff except

for custom, there is never a code along with the services to be taxed in Pakistan. This problem arose originally in the Central Excise and Sales Act, 1944 revised in Federal Excise Act, 2005. Federal Excise are levied on good, than it was extended to services by virtue of Chapter 98 of the Federal Excise Act. All heading of SSToS Act, 2011 shows tariff heading commence with chapter 98 – the whole chapter 98 was brought in SSToS Act, 2011. There are no service headings under World Custom Organization as it deals with goods only.

98.13 Financial sector includes banking 9813.4000 is subsector (9813.4990). There are three stages of coding under the harmonized coding of services as laid in SSToS Act, 2011.

The first is the sector to be identified for example banking sector 9813.4000 and the second and third is the category i.e. the service within the banking sector which is identified as second digit after the full stop (.) (e.g. 9813.4100 guarantee etc) and if anything in that subsector is to be taxed than that is to be identified by the third digit after the full stop like 9813.4990. it shows that 9813.4990 comes under 9813.4900.

The heading 9813.4900 defeats the whole concept of the linkages between the harmonized code heading and the descriptions contained therein, unless the content is specifically otherwise. In the case of 9813.4990 if the description is read in its proper and complete context than there is no need for any subheading under the heading 9813.4900.

The same matter has been decided by the Honorable High Court of Sindh in 2014 PTD 284 relevant page 288, in Citi Bank case. The case of Citi Bank pertains to the period when these services were taxable under the Federal Excise Act 2005 and concluded the argument that this taxability is being based on the concept that the bank is an insurance agent but the general insurance agent have not yet been taxed under the SSToS Act, 2011. It is in the 1<sup>st</sup> Schedule and not in Second Schedule.

The adjournment sought by the Appellant was not allowed. It is a time bound case by the Honorable High Court. On 23.01.2018 Appellant sent adjournment application through Ms. Zana ACA representative of the appellant was present today. Ms. Lubna Assistant Commissioner present for Respondent presented the argument and copy of the arguments of the learned respondent have been provided to the representative of the appellant. In reply to Ground No.1 to 3 – The respondent submitted that vide Finance Act 2016 – an amendment has been made in Section 23 of the SSToS Act, 2011 whereby, the time period of assessment has been extended from 5 years to 8 years. Since it is a substantive amendment (no new tax was imposed nor any change in tax rate was made through this amendment). It is a settled principle of interpretation related to statutes that procedural amendments are to be operative retrospectively – when this amendment was made the time of 5 years for assessment had not expired.

In response to ground No.4 and 5, Ms. Lubna Assistant Commissioner submitted that the appellant had stated that Commissioner (Appeals) had erred in concluding that bancassurance services are taxable under tariff heading 9813.4990 w.e.f. 01.07.2011 and upheld the order in original in toto. Taking the version of Commissioner (Appeals) since tariff heading 9813.4990 is a subheading of 9813.4000 therefore, the bancassurance services fall under tariff heading 9813.4990 read with 9813.4000 and the tariff heading 9813.4000 was present in 2<sup>nd</sup> Schedule

since 01.07.2011. The respondent in support cited the case of M/s Pak Reinsurance Company v/s Commissioner (Appeals) Sindh Revenue Board of the Appellate Tribunal in Appeal No.AT-02/2013 paragraph 13.

The departmental representative continued that the argument of the learned Appellant's counsel pertained to the case of Citi Bank per the respondent, the main issue in this judgment is that Federal Tribunal did not connect insurance commission with the tariff heading in the group 'Banking Services'. The Federal Tribunal did not place or identify the 'insurance commission' under any specific tariff heading of the banking services group nor placed 'insurance commission' under any tariff heading of the Federal Excise 2005. It is held in the said judgment that under Federal Excise Act, 2005 that all the "other" were subservient of their immediate above (upper) heading. At the same, the Honorable High Court of Sindh discussed that all "other" (mentioned in Schedule of taxable services) are not dependent to the immediate above previous heading is an observation given by the Honorable High Court and it is held in the said judgment that this condition does not meet in Federal Excise Act, 2005 – whereas under the Sindh Sales Tax on Services Act, 2011 the legislature intended to make the subheading 9813.4990 as an independent tariff heading for the reason the words used are 'other services not specified elsewhere'.

It is commonly known that the legislature are never short of words thus any word or phrase made part of legislation are to be given proper meanings as written. If the legislature had intended to make tariff heading 9813.4990 subservient to Safe Deposit Locker falling under tariff heading 9813.4900 then, they would have used the words 'other services of safe deposit lockers not specified elsewhere'; and the tariff heading would be 9813.4920 which made it clear that tariff heading 9813.4990 is an independent subheading and covers all the other services provided by the banks. As the appellant have no objection on bancassurance being a service provided by bank, under SSToS Act, 2011 it is clearly mentioned.

The respondent Ms. Lubna Assistant Commissioner cited judgment of Supreme Court 2007 PTD 67 the said case it is held that where the connotation 'services' in plural is used and the institution is defined in the case banking company than all the services provided by that institution are taxable otherwise that are specifically exempted through notification and further contended that this completes the reply of the respondent given in response to the argument of the appellant pertaining to the judgment of Honorable High Court given in case of Citi bank. The respondent continued that the contention of the Appellant that they fall under tariff heading 9819.1300 'Commission Agent' have no weight as the above discussion explains clearly spells out that the said services are banking services. Taking up the next argument regarding the confronted amount that the assessable amount stood at Rs.1,308,655,984/- instead of Rs.1,435,567,315/- the appellant failed to substantiate the amount and have not produced any document / evidence till date. The department had taken the information from third party which although is challenged by the appellant but the appellant have failed to substantiate their contention.

7. On 29.01.2018, the learned counsel of the appellant Mr. Shabbar Zaidi FCA in reply to the arguments of the respondent submitted that the appellant disagrees with the amendment made in Finance Act 2016 increasing the time limit under 23(2) of the SSToS Act, 2011 can be

retrospectively applied. It is to be applied prospectively accordingly in this particular case, the issue of the Show cause notice on March 2017 is barred by limitation as it covers the period under consideration from 1<sup>st</sup> July 2011 to February 2012. Reliance is placed on the decision of the Appellate Tribunal Inland Revenue 2017 PTD 211 and related decision of Supreme Court in the case of Commissioner of Income Tax Rawalpindi v/s Major General ® Dr. C. M. Anwar. The period which is becoming time barred is from July 2011 to February 2012. The order in original covers the period from July 2011 to January 2017.

The learned representative of the appellant in response to argument on ground No:5 presented mechanism of HS Code – reading of WCO, the legal validity of this code has been accepted by the Honorable High Court of Sindh in the case of Citi Bank 2014 PTD 284 relevant page Nos: are 295 & 296. The respondent case against the appellant that the entry applicable is 9813.4990 and according to the Custom Harmonized System, entry 9813.4990 cannot be applied and taxed on the amount referred to as bancassurance received by the Bank hence the order is wrong. It cannot be isolated from 9813.4900 it is to be derived from 9813.4900. He further stated that the last two digits of 4900 can only be derivatives of 4900 and cannot be any service that is not covered under 4900 in nature. According to the appellant the tariff heading 9813.4990 is restrictive in nature to the above heading 9813.4900 only and cannot be read or understood otherwise. 9813.4990 bancassurance cannot be taxed, the said entry has wrongly been incorporated in the 2<sup>nd</sup> Schedule of the tariff. The respondent is relying on the case of Pak Reinsurance Corporation which relates to the services of insurance business including reinsurance business. In that case there was no dispute on the taxability of reinsurance business, in Habib Bank case the fundamental issue that the appellant is not an insurance company and the respondent / department has not taxed the Appellant as 'insurer' in any form. Therefore the case referred by the department is coherent in relation to time limitation only and not on the concept of taxability of this amount representing the services of bancassurance.

In response to ground No.4 – it is submitted that even if it is held that bancassurance is taxable under entry 9813.4990 than it will be taxable from the date of its insertion in the 2<sup>nd</sup> Schedule which is 1<sup>st</sup> November, 2011. In argument ground No.5 what can be included in the term others it would be appropriate to refer to paragraph 20 of the order of Honorable High Court of Sindh in the case of Citi Bank reported 2014 PTD 284 on the subject matter. There is only one dispute that department considers that entry No.9813.4990 can include all services not otherwise provided whereas the appellant holds that entry No.9813.4990 can only be read in conjunction and with relevance to 9813.4900. it is further stated that 9813.4000 is not a charging entry it is a heading for banking services that is why it ends with a colon and accordingly the services of banking companies which are to be taxed are listed down in the paragraph / entries below 4000 e.g. 9813.1000 for guarantee, 9813.2000 for brokerage, 9813.4900 for safe deposit lockers.

Accordingly it would not be correct to state that the entry 9813.4990 is a residency, all inclusive all encompassing entry for taxing any other services rendered by banking companies that has not been listed in the entries below 9813.4000.

Regarding the SST amount of the appellant was not accepted by the respondent because the appellant did not provide the general ledger. The respondent received the record from the 3<sup>rd</sup>

party and the difference is due to variation in the mode of recording by the 3<sup>rd</sup> entry and the Habib Bank Limited. The appeal case involves interpretation of the tariff heading hence penalty and default surcharge cannot be imposed.

8. We have heard the learned representatives of both sides. The appellant's counsel has challenged the issuance of show cause notice dated 2<sup>nd</sup> March, 2017 covering the period from 1<sup>st</sup> July, 2011 to January, 2017 on the ground that show cause notice prior to the amendment made in the Sindh Finance Act, 2016 the period under section 23(2) of the SST Act, 2011 was 5 years and by virtue of amendment the time limit under section 23(2) had been extended to 8 years, the same cannot be given retrospective effect. He further submitted that show cause notice for the tax period July 2011 to February 2012 is time barred as it covers the period under consideration from 1<sup>st</sup> July, 2011 to February 2012, that it is beyond the original provision of 5 years. The show cause notice cannot be issued.

The subsection 2 of section 23 provides that no order under subsections 23(1) or (1A) shall be made by an officer of the SRB unless a notice to show cause is given to the person in default within 5 years from the end of the tax period to which the order relates. The said subsection (2) of Section 23 was amended vide Sindh Finance Act 2016 and instead of 5 years the period was extended to 8 years in which a show cause notice to the person in default can be issued. In the instant case the tax period of July 2011 was ended on 31.07.2011. the show cause notice was issued on 2<sup>nd</sup> March, 2017 for the default to tax starting from 01-July-2011 to January 2017. In view of the extension of time from 5 years to 8 years in the issuance of the show cause notice the respondent / department rightly issued the show cause notice which is within 8 years from the end of the tax period that is 31<sup>st</sup> July, 2011.

9. The Commissioner (Appeals) has held in paragraph 16 of the order in appeal that "it is the legislature's intent that the time has been extended and it has given it a retrospective affect". The intention of the legislature is not apparent from the amendment. All laws are prospective unless the legislature expressly provides a taxing provision to be retrospective.

10. The appellant has cited the following case laws:

a) Supreme Court of Pakistan  
Civil Petition No:1304 of 2014

Commissioner of Income Tax Rawalpindi Zone RTU Rawalpindi

Versus

Unreported case of Major General ® Dr. C.M. Anwar etc.

- Vide the above cited judgment the Honorable Supreme Court has held that order of amendment could only be passed under section 122(2) of the Income Tax Ordinance, 2001 within the period of five years and Section 122(2) as amended by the Finance Act, 2009 shall have no retrospective effect. It has further been discussed in said judgment that when the Assessment in favor of the taxpayer as per section 120 had become conclusive and the period for the purpose of invoking earlier section 122(2) had expired. Whereas, under the provisions of Sindh Sales Tax

on Services Act, 2011 there is no parallel section to Section 120 of the Ordinance, 2001 i.e. provision of past and closed transactions. Hence the facts are distinguishable when compared to the facts of the instant case.

b) 2017 PTD (Trib.) 21

Inland Revenue Appellate Tribunal

Messers NH Packages Faisalabad

Versus

CIR (Appeals) Faisalabad and others

Perusal of the above mentioned case laws have distinguishable facts to the instant appeal case, hence both the citation relied upon have no applicability.

11. We now take up next grounds. 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.

12. 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 invisibly 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.

13. 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 / Sereant 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"*.

14. 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 charge 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 of 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.

15. 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.



16. However, if the appellant deposits the principal amount of Sindh Sales Tax involved within 30 days of the receipt of the said order, extreme leniency will be shown as a special case and penalties imposed would not be required to be paid by the appellant. In so far, as the amount of default surcharge is concerned, we recommend that SRB may kindly consider exempting at least fifty percent (50%) of the amount of the default surcharge as special case, as it pertains to the initial stages of the coming into force of the new law by exercising the powers under section 45 of the SSToS Act, 2011. In implementation of the Act and rules the purpose is not to create hardship but at the same time ensure proper and timely implementation of the laws and rules framed thereunder.

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

18. The appeal is disposed of in the above terms.



(Muhammad Ashfaq Balouch)

JUDICIAL MEMBER



(Razia Sultana Taher)

TECHNICAL MEMBER

Karachi

Dated:07.02.2018

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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**REGISTRAR**  
**APPELLATE TRIBUNAL**  
**SINDH REVENUE BOARD**