

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-07/2018

M/s Honest Traders Appellant

Versus

Deputy Commissioner (Hyderabad Zone) SRB Respondent

Mr. Nasir Ahmed Khan Advocate For Respondent

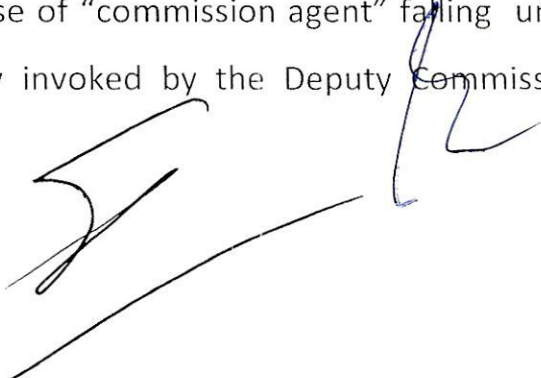
Syed Rizwan Ali, D.C., SRB, Hyderabad For Appellant

Date of hearing 11.04.2018
Date of Order 17.04.2018

ORDER

Mr. Agha Kafeel Barik: This appeal lies against order of Commissioner (Appeals) dated 30.11.2017, whereby he confirmed the order of the Deputy Commissioner SRB, Hyderabad dated 29.08.2017 passed to compulsorily register the appellant under section 24 B and also imposed penalties of Rs. 100,000/- and Rs. 10,000/- under section for not getting voluntarily registered under section 24 A. According to the Deputy Commissioner SRB the appellant was rendering services which fall under the tariff code ~~of~~ 9819.1300 that of an "Commission agent" and also 9845.0000 that of "Supply Chain Management or distribution (including delivery) services".

02. The Commissioner (Appeals) however, held that there was no reason to invoke tariff code 9845.0000 for "supply chain management" and that services in question were those of "commission agent" falling under tariff code 9819.1300, which was initially invoked by the Deputy Commissioner SRB for registration



under section 24 B. He directed the Deputy Commissioner SRB to change the principal activity accordingly.

03. The facts of the case are as under.

03.1. On the basis of an information that the appellant is engaged in rendering services of "commission agent" and also those of "supply chain management" to two Pharmaceutical companies, namely Bosh Pharmaceutical and Linz Pharmaceutical, the Deputy Commissioner SRB issued a show cause notice dated 27.05.2017 as to why he should not be registered under section 24 B. Mr. Mansoor Ali, proprietor of the firm Honest Traders, appeared in person and provided copies of agreements of Honest Traders with Bosch & Linz and claimed that he was doing trading with these two companies on 'trade discount' basis and was not rendering any such services which fall under the ambit of Sindh Sales Tax, as confronted by The Deputy Commissioner SRB Hyderabad.

03.2. The Deputy Commissioner SRB rejected the plea of the appellant and making the two agreements the basis, held that the appellant was engaged in rendering such services as confronted in his show cause notice and was liable to be registered under section 24 B. Thus he not only passed an order under section 24B but also imposed penalties of 100,000/- Rs. 10,000/- under section 43 (1) for not getting voluntarily registered, under section 24 A.

03.3. The Commissioner (Appeals) on appeal against the order-in-original of The Deputy Commissioner SRB discussed at length the genesis of "supply chain management and distribution" falling under tariff heading 9845.0000 and held that it was not applicable in this case. However, he also held that the



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case falls under the category of 'Commission agent' under tariff code 9819.1300 and thus he upheld the order of the Deputy Commissioner SRB as legal. Hence this appeal before us.

4. Mr. Ahmed Nasir Advocate, the learned A.R. of the appellant argued that it was a case of simple trading on the basis of advance payments. He submitted that purchase orders were placed and the purchases were made with trade discount. He submitted that trade discount is profit which is built in purchase price and that it was earned in cases where M.R.P (maximum retail price) was fixed and that the appellant was not paid any commission as he was not rendering any service of a 'commission agent'. About the agreements with Bosch & Linz he argued that while these agreements were just on paper the actual practice was different, as explained by him, in view of which the agreements have become redundant. However, he could not answer to a question as to why these agreements have not been revoked till date and as these are made on non judicial paper these were very much valid and operative. No reason was given as to why these agreements were not mutually cancelled if these were not operative.

5. On the other hand, Mr. Rizwan Deputy Commissioner SRB Hyderabad, who has based his order on the said agreements, submitted that the proprietor Mr. Mansoor Ali himself provided copies of these agreements to him during hearing of the case and, as is the normal business practice in this field, Honest Traders is rendering services of distribution of medicine on commission basis on behalf of the two Pharmaceutical Companies. He stated that it was not correct that the appellant was doing sale & purchase as normal trading of medicine which did not fall under the ambit of Sindh Sales Tax. The Deputy Commissioner SRB referred to the agreements with Bosch & Linz which show that the appellant is the agent of



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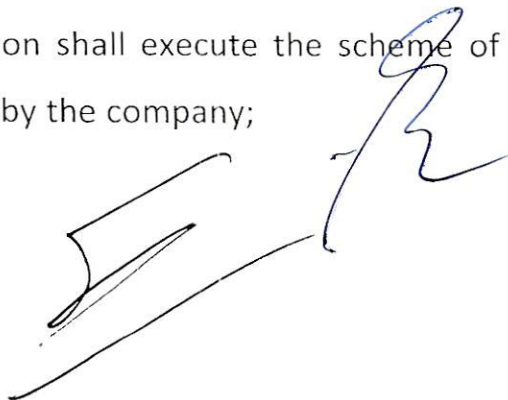
Bosch which was the principal company. The salient points of an agreement reproduced by him in his order are also reproduced below.

- “i) M/s Bosh Pharmaceutical (Private) Limited has appointed M/s Honest Traders as an intermediary for supply of pharmaceutical products within the territory of Mirpukhas including all towns/ districts and adjacent areas therein;
- “ii) M/s Honest Traders has represented to Bosch that it has the requisite resources to act for Bosch;
- “iii) The relationship between Bosch and the person is that of Principal and Agent;
- “iv) That in all dealings with third parties, the person shall claim to be an agent for Bosch;
- “v) The Bosch will not allow any sub-agent/ or sub-distributor and/ or any sub let by Honest Traders;

That the person will provide Bosch adequate accommodation, warehousing, storage facilities;

For quoting, negotiating and/ or procuring to any institution, company firm, authority or person, the person will do it with the approval of Bosch and associated commissions will be mutually agreed;

- “viii) The person shall execute the scheme of traders or trade bonus as directed by the company;



- “ix) The person will supply Bosch products by door to door delivery;
- “x) Besides above there are detailed operational guidelines as to how to manage orders from retailers/ customers, inventory management, subletting of activities, damage/ loss claims, stock replenishment and communication between two parties etc.”

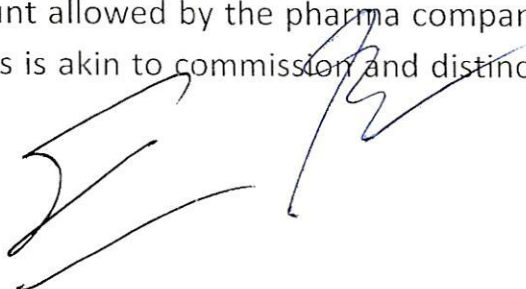
6.01. After going through the arguments of both sides and also the facts of the case my Findings are as under:

It is noted that the appellant or his authorized representative refused to submit any statement of account / financial statement for the relevant periods at any stage. The analysis of the documents is necessary to know about the actual investment of the appellant in the business and to determine whether the appellant's instance about trading was correct.

6.02. There are two letters on record, from Bosch and Linz, addressed to Deputy Commissioner, SRB Hyderabad, both dated 24.04.2017 endorsing a list of authorized distributors in medicines in Sindh, except Karachi, whom the pharma companies have owned as their distributors, and the name of the appellant is included in the list. While an agreement has been provided by the appellant himself in the case of Honest Traders the letterers dated 24.04.2017 of both the pharma companies are sufficient to determine the status of the appellant. On the other hand the appellant has never refuted such claim by the pharma companies, which means implied acceptance of their status as distributor of the said pharma companies.

6.03. Although the term distribution, as used in the letters of pharma companies referred above, has not been defined in the Act, yet its general meaning is nearer to that of a commission agent, as defined in Section 2(22A) of the Act, and not that of a trader.

6.04. The trade discount allowed by the pharma companies on sale of medicines to its distributors is akin to commission and distinct from profit earned out of free trading.



- 6.05. The control of the pharma companies over financial matters as well as on movement of stocks (the distributors are not allowed to keep stock for more than a specified period) is very obvious in this case and squarely fits in the definition of a "commission agent" under section 2(22A) of the Act, which need not to be reproduced here for the sake of brevity.
- 6.06. The agreements between the appellant and the other two parties namely Bosch & Linz are quite important to determine the relationship between the said parties. These agreements still stand valid and the statement that these were verbally revoked is a misleading statement. In any fiscal arrangement it is the written document which prevails over verbal statement. Besides, no oral assertion is admissible in the presence of a written agreement.
- 6.07. Even from the normal business activities of the said companies it is evident that the whole business is controlled by the principal companies who fix the M.R.P (Maximum retail price) and discount is allowed as per agreement. Had the appellant been doing business freely he would fix his own selling price and not the price fixed by the principal pharma companies.
- 6.08. In general trading a trader earns profit on sale and not on purchase. In this case discount is allowed on the invoice issued by the principal companies. This procedure is different from general trading. The accounting of this discount / commission will also be different.
- 6.09. It is also observed that the principal companies have main financial control as well as control over movement of stock lying with the appellant. These medicines are sold under the brand name of the main pharma companies and the appellant can not put its brand or logo on the packing of sold items. Similarly, expenses on sales promotion on large scale such as T.V.



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advertisement and salaries and commission of medical representatives are all borne by the principal pharmaceutical companies.

7. In view of above findings I hold that the business of the appellant falls in the category of 'commission agent' under tariff code 9819.1300 and thus I uphold the impugned order of The Commissioner (Appeals):
8. The appeal is accordingly dismissed.


(AGHA KAFEEL BARIK)
TECHNICAL MEMBER

Karachi

Dated: 17.04.2018

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. Office Copy.

✓ Guard File.


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD