

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-08/2018

M/s Tawakal, Enterprises & Dairy Form 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: An appeal has been filed against the order of Commissioner (Appeals) dated 30.12.2017 whereby he confirmed order-in-original of the Deputy Commissioner, SRB Hyderabad dated 29.08.2017. The facts of the case are as under:

02. The Deputy Commissioner, SRB Hyderabad on the information gathered from two Pharmaceutical Companies, namely Bosch Pharmaceuticals and Linz Pharmaceutical, formed an opinion that the appellant M/s Tawakal Interpsises was engaged in an economic activity which was taxable and being a resident of Sindh he was liable to be registered under section 24 of the Act, but had failed to get himself voluntarily registered under section 24 A with SRB. Thus the Deputy Commissioner Hyderabad confronted him with a show cause notice dated 27.05.2017 to which there was no response, nor did the appellant submit any details or documents leading to the verification about the nature of his economic activities / business. Thus the Assistant Commissioner proceeded to register him compulsorily under section 24 B of the Act under tariff code 9845.0000 in the



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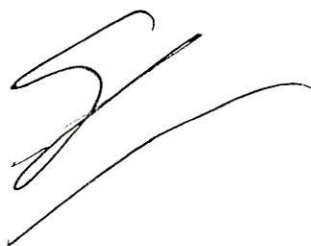
category of 'Supply chain management or distribution (including delivery) services'. The Deputy Commissioner Hyderabad however failed to obtain copies of contracts / agreements of the appellant with the said two Pharmaceutical Companies who are main principal companies of the appellant. He also imposed two penalties of Rs.100,000/- Rs.10,000/- for violation of section 24 and 24 B.

03. On appeal the learned Commissioner (Appeals) discussed at length the genesis of the term "supply chain management or distribution" ending with a note that the appellant does not fall in the category of services provider. However, after doing so the learned Commissioner (Appeals), discussed the alternate categories in this field of economic activity and gave his judgment that the appellant falls in the category of 'Commission agent' under tariff code 9818.1300 and directed the Deputy Commissioner SRB to change the principal activity accordingly. The learned Commissioner (Appeals) however held that since the case involved interpretation of law the appellant will only be required to pay the penalties in case of failure to file monthly Sales Tax returns within a period of 3 weeks.

04. The appellant did not comply with the order of Commissioner (Appeals) and has come in appeal before us.

05. In his appeal the appellant has taken the main plea that he is not a commission agent of Bosch Pharma and Linz Pharma, instead he is simply trading in their medicine on normal basis. He refuted any agreement with the said parties, as has been produced by the department in other cases.

06. It is also noted that the Deputy Commissioner SRB confronted the appellant vide his show cause notice dated. 27.05.2017 with his intention to register him under two tariff headings i.e. supply chain management- 9845.0000 and commission agent 9819.1300, but passed order u/s 24B under 9845.0000 supply chain management only. The Commissioner (Appeals) did not agree with the Deputy Commissioner SRB about categorizing the appellant under tariff code 9845.0000 (supply chain management) and instead directed him to invoke tariff code 9819.1300 i.e commission agent.



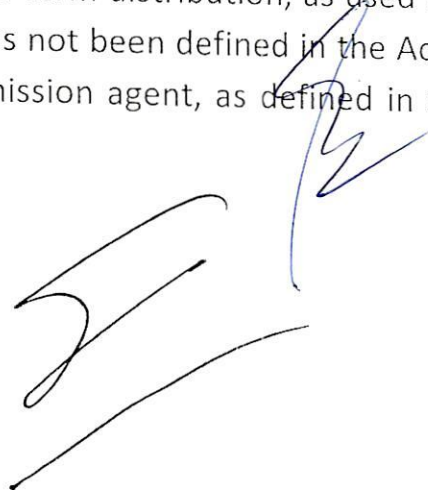
07. The Deputy Commissioner SRB, Hyderabad submitted that the Commissioner (Appeals) can alter any order appealed against vide his powers under section 59 (1), and that the Appellate Tribunal SRB also in its judgment in Appeal No. 17/2013 in the case of M/s APM Terminals (Pvt.) Ltd. remanded the case to the concerned officer "to determine nature of services provided or rendered by the appellant and to determine the proper tariff heading under which the services provided by the appellant fall after providing due opportunity of hearing to the appellant."

08. After hearing both the parties my findings are as under.

8.01. 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.

8.02. Although, no written agreement was being provided either by the appellant or pharma company in the case of Tawakal yet 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.

8.03. 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.



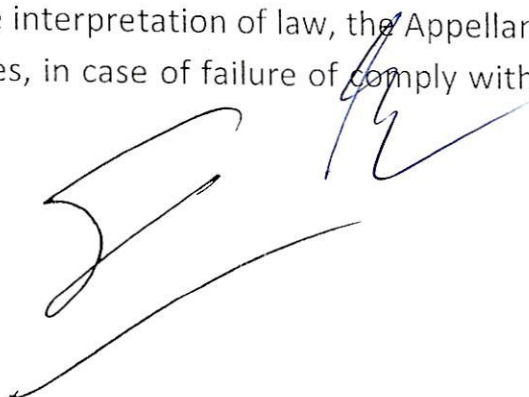
8.04. The trade discount allowed by the pharma companies on sale of medicines to its distributors is akin to commission and distinct from profit earned out of free trading.

8.05. 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.

09. The appellant has been rendering services of a commission agent as apparent from circumstantial evidence, and not doing business as a general trader. He has not submitted any record at any level in support of his claim that he is a trader. On the other hand it is established that he is doing business of medicines of the renowned Pharma Companies including Bosh & Linz on the same lines as that of its sister company Honest Traders.

10. While the Commissioner (Appeals) disagreed with Deputy Commissioner SRB, Hyderabad about registration under section 24 B in the category of supply chain management and gave elaborate arguments for the same, he has altered the code from 9845.0000 to 9818.1300 (commission agency services), with his directions as under:

"For the given reasons I hold that the services in question in their nature are "commission agent services" and the compulsory registration of the appeals should have been only under such category. The order in original is thus hereby altered to read the registration of the Appellant in the category of Commission agent with no other activity (if this is the only activity of the Appellant). The respondent is directed to change the principal activity / activity accordingly. However, by considering it a matter involving the through the interpretation of law, the Appellant will only be required to pay the penalties, in case of failure of comply with the registration and also to



file the monthly sales tax returns within a period of 03 week. The Appellant is directed to comply with the law in his interest. Order accordingly”.

11. In view of my findings and also the cited judgment of the Appellate Tribunal SRB in appeal No: AT-17/2013 of 28.09.2015 in the case of APM Terminals reproduced above, I hold the order of the Commissioner (Appeals) just and legal, and is hereby confirmed.

12. As a result the appeal is disallowed.


(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.

5. Guard File.


REGISTRAR
APPELLATE TRIBUNAL
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