

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

DB-I

Appeal No.AT-113/2018

Assistant Commissioner, SRB, Karachi Appellant

Versus

M/s Mohsin Mehmood (Manzoor Ahmed) Respondent

Date of filing of appeal 30.11.2018

Date of hearing 23.04.2019

Date of Order 17.05.2019

CORRIGENDUM

It has been noticed that in the title of the Order the date of hearing and the date of Order were mistakenly typed as 23.04.2018 and 17.05.2018 instead of 23.04.2019 and 17.05.2019 respectively.

In the order, the date of hearing and the date of order may be read as 23.04.2019 and 17.05.2019 respectively.

Copy of the order may be supplied to the parties.


(Justice Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi

Dated :29.05.2019

Copies supplied for compliance:-

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

Copy for information to:-

- 3) The Commissioner (Appeals-II), SRB, Karachi.
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REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

EDB-1

APPEAL NO. AT-113/2018

Assistant Commissioner, SRB, Karachi.....Appellant

Versus

M/s Mohsin Mehmood (Manzoor Ahnrad)Respondent

Date of filing of Appeal: 30.11.2018

Date of hearing: 23.04.2018

Date of Order: 17.05.2018

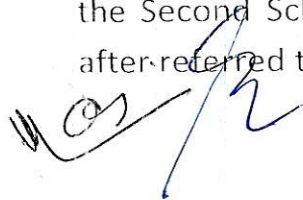
Mr. Rashid Ali, AC-SRB for appellant.

Mr. Abbas, FCA-Consultant along with Mr. Waqas Ahmed of Abbas & Co for respondent.

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant/department challenging the Order-in-Appeal No.190/2018 dated 02.10.2018 passed by the Commissioner (Appeals-II) in Appeal No. 07/201d filed by the respondent against the order in original No. 48/2017 dated 06.12.2017 passed by the Assistant Commissioner (Syed Shafquat Hussain Shah) SRB, Karachi.

01. The facts as stated in the order-in-original are that the respondent is registered with SRB under the service category of Contractual Execution of Work or Furnishing Supplies, falling under tariff heading 9809.0000 of the Second Schedule of Sindh Sales Tax on Services Act, 2011 (herein after referred to as the Act) subject to Sindh sales tax.

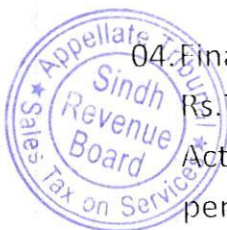



02. The allegation against the respondent as stated in the order-in-original is that the record available with SRB for the tax periods from July, 2015 to June, 2016 reveals that the appellant provided taxable services to Dow University of Health and Sciences (Hereinafter referred to as the Dow University) and earned revenue valuing to Rs.533,456,514/= involving Sindh sales tax of Rs.74,683,912/=. It was further alleged that the respondent has not declared the sales tax resulting non-payment Sindh sales tax.

03. A show-cause notice dated 27.03.2017 was served upon the respondent calling upon it to show-cause as to why tax amounting to Rs.74,683,912/= may not be assessed under section 23 (2) of the Act along with default surcharge under section 44 of the Act and penalties under serial No. 2 and 3, of the Table under section 43 of the Act. The respondent submitted the reply dated 07.04.2017 in which it was stated that services pertained to the construction of new buildings of the University which is owned by Government of Sindh and are not meant for commercial purposes and for use of educational institution and the services are exempted from sales tax vide Notification No. SRB-3-4/7/2013 and Notification No. SRB-3-4/16/2016. The respondent submitted another reply dated 11.05.2017 with the same pleas as raised in the earlier reply.

04. Finally the Assessing Officer passed order determining tax of Rs.74,683,912/= along with default surcharge under section 44 of the Act (to be calculated at the time of actual payment) and imposing penalty of Rs.3,734,196/= under serial No.3 of Table under section 43 of the Act.

05. The respondent challenged the Order-in-Original by way of filing appeal before the Commissioner (Appeals-II) who set aside the order in original and allowed the appeal.



06. Mr. Rashid Ali the learned Ac submitted that respondent was taxed under tariff heading 9809.0000 in the sum of Rs.74,683,912/= along with default surcharge and penalty. He submitted that no exemption is available to the respondent under Notification dated 18.06.2013 as the construction services were provided to Dow University, which is not a government department, but an autonomous and statutory body. He then submitted that the Commissioner (Appeals) erroneously treated Dow University as a Government department and wrongly changed the Tariff heading from 9809.0000 to 9824.0000.

07. Mr. Abbas the learned representative for the respondent submitted that the departmental appeal may be dismissed being void of reasons and that the order of Commissioner (Appeals) is quite judicious in the light of SRB Notifications particularly one dated 26.08.2011 and also dated 18.06.2013.

08. Mr. Rashid Ali also filed written submissions and submitted that Dow University is body corporate and its functions are governed under section 19, Chapter IV of the Dow University of Health and Sciences Act, 2004 (hereinafter referred to Act of 2004) and is not a government department and the Notifications referred by the learned representative for the respondent are not applicable. He also submitted that Income Tax Department has given exemption on income of public sector universities established solely for the educational purposes and not for the purposes of profit. He submitted that Dow University also conducts activities for the purpose of generation of revenue. The learned AC also pointed out certain services provided by the respondent falling under tariff heading 9814.2000 and no exemption is available on those services.

09. Mr. Abbas the learned representative of the respondent also filed written submissions. He submitted that under the Notification the exemption is available to Government Departments for their civil works including Cantonment Boards. He submitted that the services were provided for construction of "Government Buildings" (owned and controlled by Sindh Government), and the Government has been defined as per section 2(49) of the Act, 2011. Mr. Abbas referred to Notification No.SRB-3-4/7/2013 dated 18.06,2013 in relation to tariff



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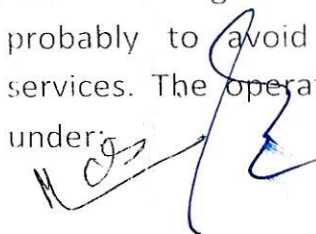
heading 9824.0000 regarding Construction Services and submitted that construction and repairs of roads, ports, airports, railways, transport terminals and bridges and also Government (including Local Government and Cantonment Board) buildings as are not meant for commercial purposes or for commercial letting out on rent are exempted from payment of sales tax. (Emphasis supplied).

10. Mr. Abbas also referred to Notification No. SRB-3-4/3/2011 dated 26.08.2011 and submitted that the construction and development of EPZ, SEZ, diplomatic and counselor buildings and such other buildings and structure of the organizations as are exempt from application of the Income Tax Ordinance, 2011 are also exempted from payment of sales tax. He submitted that since the Dow University is a Public Sector University and not meant for the purposes of profit services provided to such institutions are exempted under Clause 126 of the Second Schedule to the Income Tax Ordinance, 2001, which provides that any income of a public sector university established solely for the educational purposes and not for the purpose of profit.

We have heard the learned representatives of the parties and perused the record made available before us and the written submissions filed by them.

11. The issue is that the respondent got voluntarily registration under tariff heading 9809.0000 Contractual Execution of Work or Furnishing Supplies and had rendered services of construction (9824.0000) to Dow University during the tax periods from July 15 to June 16. The department taxed gross receipts of 533.456 million @14%. The departmental disputes the status of Dow University being a government department and presented a judgment of P.R.A. Tribunal. The department also submitted that the Commissioner (Appeals) has erroneously changed the Tariff Heading from 9809.0000 to 9824.0000.

12. The Assessing Officer passed assessment order invoking 9809.0000 probably to avoid providing exemption available on construction services. The operative part of the order in original is reproduced as under:





"22. Keeping in view of above references, it is crystal and clearly appears that the Government has given exemption under the aforesaid clause of SRB notification No. SRB-3-4/72013 dated 18.06.2013 only to the Departments governs by the Government of Sindh. Whereas, the matter relating to Universities are govern by the Governor of Sindh, as per Sindh Government Rules of Business, 1986. Moreover, the Dow University of Health Science is body corporate defined in sub section 3 of section 3 of The Dow University of Health Act, 2004 and its function are governed by the Authority defined under Section 19 of Chapter -IV *ibid*. it is also evident that the Dow University of Health Science runs their business on commercial basis, as they are wholly authorized to fix, charge the fees in different manners including self-hearing/self-financing scheme from their students including foreigner students and also authority to earn revenue from different sources for the benefit of the University and their employees. Thus, the given clarification from the above references are quite enough to declare the Public Universities are neither covered under the definition of Government Department nor entitle of any exemption or benefit given under the Sindh Sales Tax on Services Act, 2011 and any notification issued thereunder.

23. Therefore, I order to M/s. Mohsin Mehmood (SNTN# 4239599-4) to immediately deposit the Sindh sales tax amount of **Rs. 74,638,912/-** on account of violation of Section 3,8,9,17 and 30 of the Act, 2011 read with Rule 13 and 14 of the Rules, 2011 along with default surcharge under section 44 of Sindh Sales Tax on Services Act, 2011 (to be calculated at the time of payment). I also impose penalty of **Rs.3,734,196/-** (5% of the Principal /Tax amount i.e. Rs.74,683,912/-) as per serial No.3 of Section 43 of Sindh Sales Tax on Services Act, 2011".

13. The Commissioner (Appeals) has treated the Dow University as a government entity and allowed exemptions available under Notifications Dated 18.06.2013 and 26.08.2011 and invoked Tariff Heading 9824.0000, his reasoning are as under:-

09. The dispute between the parties in in respect of tax exemption claimed by the Appellant on the pretext that it provided construction services to the buildings of M/s Dow University of Health Science which fall in the category of Government buildings as are not meant for commercial purposes or for the same are exempt for charge and levy od Sindh Sales Tax on Services under clause (iii) of the tariff heading No.9824.0000 of the SRB exemption

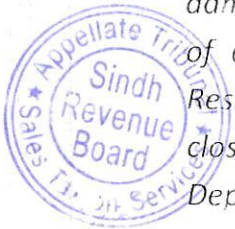
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notification No. 3-4/7/2019 dated 18.06.2013. However, the Respondent refused to grant exemption for the reason that M/s Dow University of Health Science does not fall under the category of Government.

"10. In order to appreciate the controversy it is necessary to state the facts and circumstances as to how and with what peculiarities the M/s Dow University of Health Science came into being. Sir Hugh Dow was the second Governor of Sindh, who laid the foundation stone of the Dow Medical College in December, 1945. As per the Accreditation Certificate No. 15-29/HEC/A&A/2003/207 dated 05.04.2004 from the Higher Education Commission, Pakistan, the M/s Dow University of Health Sciences, Karachi is a university established under the **Sindh Government Ordinance No. VI of 2003** dated 29.12.2003 in public sector, with a view to promote multitude of undergraduate and postgraduate programs that caters to the needs in healthcare science by providing quality human resources. The University provides academic facilities through equipped laboratories, museums, information technology, including video conferencing, besides facilities at the teaching departments, hostels and the campuses in general within the province of Sindh. The Dow University of Health Sciences Act, 2004 (**Sindh Act No. X of 2004**) contained the following guidelines in accordance with which the M/s University of Health Sciences was required to work, that it is to say, (i) "**Government**" means the Government of Sindh (ii) **Government** may, in consultation with the University by general or special order, modify the extent and scopes of the powers of the University with regard to such territorial limits of institutions (iii) No Educational institutions of Health Sciences situated within the territorial limits of the University shall, save with the consent of the University and sanction of **Government**, be associated in anyway with or seek admission to the privileges of any other' University (iv) the annual statement of accounts of the University signed by the Director of Finance and the Resident Auditor shall be submitted to **Government** within six months of closing of the financial year (v) the Secretary to **Government** of Sindh, Health Department would be a member of the syndicate of the university.

11. From the above analysis for all practical purposes it is seen that the affairs of the M/s Dow University of Health Sciences are authorized by the government to carry our academic activities within the province of Sindh, thus it is entitled to relief from levy of SST under clause (iii) of the tariff heading No. 9824.0000 of the SRB exemption notification No. 3-4/7/2013 dated



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18.06.2013 being agency authority of the Government. The extract of the aforesaid exemption is reproduced for the sake of convenience.

"Construction services (tariff heading: 9824.0000) related to:

- (i) ----
- (ii) ----
- (iii) Construction and repair of roads, sports, airports, railway transport terminals, bridges Government (including Local Government and Cantonment Board) buildings are not meant for commercial purpose of for commercial letting out on rent:
- (iv) ----
- (v) ----"

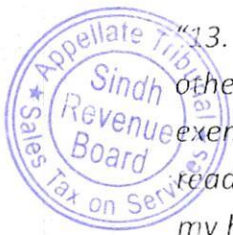
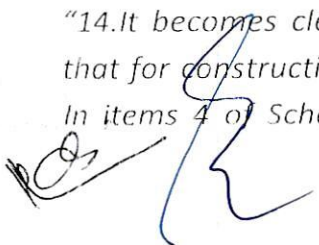
"12. The extract of clause (iv) of serial number (9) against the tariff heading 9824.0000 of SRB Notification No.SRB-3-4/2011 dated 26th August, 2011 says that:

"Construction services (tariff heading: 9824.0000) related to:

- (i) ----
- (ii) ----
- (iii) ----
- (iv) Construction and development of EPZ, SEZ, diplomatic and counselor buildings and such other buildings and structures of the organizations as are exempt from application of the Income Tax Ordinance, 2001";

"13. Plain reading of the Notification makes it clear that any university or other educational institution established solely for educational purposes are exempt from payment of the income tax under clause (92) of the 2nd Schedule read with section 53 of the Income Tax Ordinance, 2011, 2001. Therefore, to my humble view the clause (iv) of serial number (9) of the Notification is clearly attracted and the services provided by the Appellant to the M/s Dow University of Health Science are exempt. The plea of the Appellant is correct and the same has been considered".

"14.It becomes clear form the perusal of the above exemption notifications that for construction services the Government entities have been given relief. In items 4 of Schedule II of the Sindh Government Rules of Business, 1986,



which are enacted pursuant to Article 139(3) of the Constitution of the Islamic Republic of Pakistan, the administrative, service and financial matters related to the "Educational Boards and Universities" of the Provincial Government are entrusted to the Sindh Chief Minister's Secretariat. Furthermore, the preamble and the provision of the Dow University of Health Science Act, 2004 (Sindh Act No. X of 2004) sets out the functions of the University and these functions cannot be categorized as taxable services and then made liable to the payment of SST".

14. The dispute between the parties is in respect of tax exemption claimed by the Appellant on the pretext that it provided construction services to the buildings of M/s Dow University of Health Science which fall in the category of Government buildings as are not meant for commercial purposes and the same are exempt from charge and levy of Sindh Sales Tax on Services under clause (iii) of the SRB exemption notification No. 3-4/7/2019 dated 18.06.2013. The Assessing Officer refused to grant exemption for the reason that M/s Dow University of Health Science does not fall under the category of Government, but the Commissioner (Appeals) allowed exemption.

15. The questions involved in this appeal are (1) whether the appellant is providing services falling under Tariff Headings 9809.000 or 9824.000. (2) Whether the Dow University is a government entity and is entitled to the exemption available under Notifications dated 18.06.2013 and 26.08.2011.

16. The appellant undisputedly provided construction services to the University falling under Tariff heading 9824.0000 (construction services). The Tariff Heading 9809.000 deals with services provided or rendered by persons engaged in contractual execution of work or furnishing supplies (hereinafter referred to as contractual execution of work or furnishing supplies). The AC at this appellate stage in his submissions submitted that some services provided by the appellant also falls within Tariff Heading 9814.2000 (Contractor of Building (including water supply, gas supply, and sanitary works), electrical and mechanical works (including air conditioning), multi-disciplinary works (including turn-key projects)



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and similar other works (hereinafter referred to as contractor of buildings). The Tariff heading 9809.0000 is a general heading to cover contractual execution of work or furnishing supplies not falling in any other tariff heading. The benefit under Tariff heading 9809.0000 can only be taken if the service provided or rendered is not listed in the First or Second Schedule to the Act and provided under contractual execution of work or furnishing supplies. Tariff heading 9809.0000 has two components i.e. providing or rendering execution of work or furnishing supplies. To attract 9809.0000 it is necessary that both the components are available in the contract or agreement. In the Booklet titled "A Guideline on Taxable Services under Sindh Sales Tax on Services Act, 2011" issued by SRB, at page No. 13 in relation to 9809.0000 it was provided as under:-

"Contractual Execution of work or Furnishing Supplies

1).....

2) *Tariff heading 9809.0000 covers such of the services as are not specifically described in the First Schedule to the 2011-Act and are also not listed in the Second Schedule thereof but are provided or rendered or supplied under a contract, including an Agreement or a Purchase / Supply Order against a tender. For example, the non-taxable "Janitorial Services" of tariff heading 9822.3000 of the First Schedule to the 2011-Act shall not be covered for levy of tax under tariff heading 9809.0000 even when provided or rendered under contract. However, the publication services (not listed in the First or the Second Schedule to the 2011-Act), when provided or rendered in execution of contract, shall be classified under tariff heading 9809.0000 in terms of the definition of "service" given in section 2(35) of the Act read with section 3 and tariff heading 9809.0000 in the Schedules thereof.*

3) *Services provided or rendered by persons engaged in contractual execution of work or furnishing supplies where the total value of services on account of such work or supplies does not exceed Rs.50 million in a financial year will be exempt from the levy of Sindh Sales Tax subject to the condition that the total value component of services on such contractual execution of work or furnishing supplies also does not exceed Rs.10 million. This threshold is not relatable to each and every individual contract but is relatable to the total turnover of the person providing or rendering such services.*



M. O. S.

4).....

5).....

6).....

7).....

17. Since the services of construction (9824.0000) and contractor of buildings (9814.2000) are specifically listed in the First and Second Schedule of the Act of 2011 the Tariff Heading 9809.0000 is not available and the Commissioner (Appeals) has rightly changed the Tariff Heading from 9809.0000 to 9824.0000. Mere voluntarily registration in a particular tariff heading is not enough to tax the service which was actually not provided. The tax payer after getting registration under a particular heading may provide or render some other service and required to be assessed on the basis of services actually provided and rendered and not on the basis of service for which it was registered. The tax has been levied on services and before charging/taxing the determination of proper nature of service and tariff heading is necessary. In view of the discussion it is held that Tariff Heading 9824.0000 was rightly invoked by the Commissioner (Appeals).

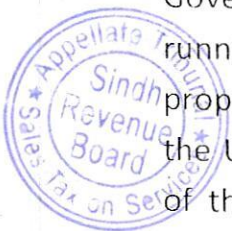
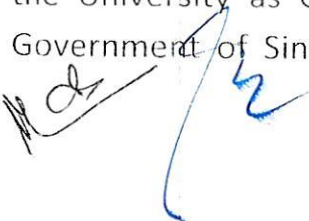
18. Dow University to whom services were provided by the appellant was established under section 3 of the Dow University of Health and Sciences Act, 2004 (hereinafter referred to as the Act of 2004). The purpose of establishing the University appears to impart education in the field of health and science. Sub-section (3) of section 3 provides that the University shall be a body corporate by the name of Dow University of Health and Sciences, Karachi and shall have perpetual succession and a common seal and may sue and be sued by the said name. A government Department cannot sue or be sued in its name as provided under Article 174 of the Constitution of Pakistan and section 79 of the Code of Civil Procedure, 1908. Sub-section (4) of section 3 provides that the University shall be competent to acquire and hold property, both movable and immovable and to lease, sell or otherwise transfer movable and immovable property which may have become vested in or has been



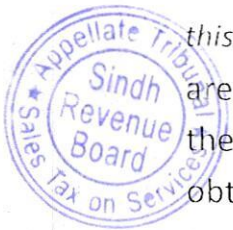
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acquired by it. Section 6 of the Act of 2004 provides powers and functions of the University, clause (viii) of section 6 provides that University shall have power to acquire, receive and manage property, grants bequests, trusts, gifts, donations, endowments and other contributions made to the University and to invest them in such manner as it may deem fit. Clause (ix) of section 6 provides that University shall have power to enter into agreements, contracts and arrangements with Government, organizations, institutions, bodies and individuals for carrying out its functions and activities. Section 23 provides the powers and functions of the Syndicate of the University. Sub section (1) of section 23 of the Act of 2004 provides that the Senate shall be the executive body of the University and shall, subject to the provisions of this Act and the statutes, exercise general supervision over the affairs and management of the property of the University. Clause (b) of sub section (1) of section 23 of the Act of 2004 provides that the Syndicate to hold, manage, receive acquire in any manner or transfer by sale or otherwise, any movable or immovable property, on behalf of the University. Clause (c) of sub section (1) of section 23 of the Act of 2004 provides that the Syndicate to hold, administer and control funds on behalf of the University and after giving due regard to the advice of the Finance and Planning Committee, invest such funds in Government securities or such other securities as may be prescribed. The Commissioner (Appeals) in his order has discussed the involvement of Government in the affairs of the University. The Government is not running the affairs of the University and is also not managing the properties and funds of the University and those entire powers vest in the University or Syndicate of the University. Merely some involvement of the Government will not change the status of the University from statutory autonomous body to Government Entity.

19. From perusal of the above it appears that the Dow University is a statutory and autonomous body and all the powers relating to the property vest in the University/Syndicate. For treating the properties of the University as Government Property the same should vest in the Government of Sindh as provided under Sub-article (2) of Article 173



which provides powers to acquire property and to make contracts. The Constitution provides that all property acquired for the purpose of the Federation or a Province shall vest in the Federal Government or as the case may be, in the Provincial Government. The Perusal of Sub-section (4) of section 3 reveals that the movable and immovable properties vest in the University who has the power to acquire and hold property and to lease, sell or otherwise transfer movable and immovable properties which may have become vested in or has been acquired by it. From perusal of clause (b) of sub section (1) of section 23 of the Act of 2004 it appears that that the Syndicate is the executive and controlling authority and empowered to hold, manage, receive acquire in any manner or transfer by sale or otherwise, any movable or immovable property, on behalf of the University. From perusal of clause (c) of sub section (1) of section 23 of the Act of 2004 it appears that the Syndicate being the controlling and executive authority is empowered to hold, administer and control funds on behalf of the University. The properties of the University does not vest in the Government of Sindh and vest in the University and cannot be treated as property of Government of Sindh. In the reported judgment in the case of Central Board of Revenue versus WAPDA, PLD 2014 Supreme Court 766 it has been held that *"13.From the above analysis it is seen that although WAPDA's affairs to some extent are controlled by the government but for all practical purposes it is an independent entity and authorized to carry out the business of utilization of water and power resources of the country and to generate electricity and in this connection has been given a free hand"*. The facts of the WAPDA case are that the WAPDA is a statutory body established and working under the Water and the Water and Development Authority Act, 1958 and obtained loan and finances. The Federal Government levied Excise Duty on advances. WAPDA claimed that it is a government authority/agency and enjoyed exemption from payment of income tax and are entitled to exemption from payment of excise duties specially on services. The Supreme Court has held that WAPDA cannot claim exemption. The ratio decided in the case of WAPDA is fully applicable in this case. In another reported judgment in the case of Collector of Sales Tax and Central Excise Lahore versus WAPDA, 2007 SCMR page 1736 it has been held



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that "15. The conclusion of the above discussion is that the supply of stationary is not exempt from Sales Tax under section 13 of the Act, the supply for the private, business or non-business use, without intervening another person, is a taxable supply made in the course/in furtherance of business i.e. the activity of selling/supplying the electricity which is carried on by respondent in the form of business....." The facts of the case are that WAPDA is a statutory and has a printing press and engaged in preparing computer stationary and supplying the same to itself for self-consumption. The stand of the WAPDA was that it was not liable to pay sales tax for the goods provided to it. In view of the discussion it is held that the buildings vest in the University cannot be termed as Government Buildings and Dow University cannot be termed as Government Entity.

20. The Commissioner (Appeals) allowed exemption relying upon two Notifications dated 26.08.2011 and 18.06.2013. Sub-clause iv of Clause 9 of the Notification dated 26.08.2011 read as under:-

"iv. Construction and development of EPZ, SEZ, diplomatic and counselor buildings and such other buildings and structures of the organizations as are exempt from application of Income Tax Ordinance 2001".

21. The relevant portion of Notification Dated 18.06.2013 is produced as under:-

"iii. Constructions of repairs of road, ports, airports, railways, transport terminals, bridges, Government (Including Local Government and Cantonment Board) buildings as are not meant for commercial purposes or for commercial letting out on rent".

22. In view of the findings that the buildings vest in the University cannot be termed as Government Buildings, Notification dated 18.06.2013 is not applicable. As far as the exemption available under Notification sated 26.08.2011 is conditional and the same applies to those organizations that are exempt from application of Income Tax ordinance, 2001. The provision of exemption notifications cannot be liberally construed and stretch in favour of tax payer. In the reported judgment of Pakistan Machine Tool Factory versus Commissioner Sales Tax, SCMR 2006 Page



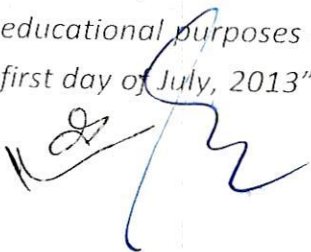
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1577 it has been held that liberal interpretation would not be made for granting exemption from levy of tax in respect of an article and that provision of exemption notification would not be stretched in favour of a tax payer. The exemption notification is to be strictly construed against the tax payers and in favour of taxing power. In the reported judgment of Hashwani Hotels Limited versus Government of Pakistan, 2007 SCMR 1131, it has been held that grants or concessions in the nature of exemption from duties and taxes are to be given a rigid interpretation against the taxpayer and in favour of taxing power. The appellant claims exemption and burden is upon it to establish that exemption is available and that for claiming exemption the appellant has to comply with all the conditions enumerated in the exemption notification. In the reported judgment of Central Board of Revenue, Islamabad versus WAPDA it has been held that person claiming exemption has to bring his case within the four corners of exemption and unless he does so he cannot be granted exemption. The Commissioner (Appeals) relied upon Section 53 (Exemptions and Tax Concession in the Second Schedule) of the Income Tax Ordinance, 2001 read with clause No. (92) of the Second Schedule, of the Ordinance, which read as under:

"(92) Any income of any university or other educational institution established solely for educational purposes and not for purposes for profit". The tax periods involved in this appeal are from July, 2015 to June, 2016

23. From perusal of the above provisions available in the Book titled "Income Tax Ordinance, 2001 (2016-1017 edition, amended up to 15th February, 2017) by Tariq Najeeb Chaudary it appears that clause (92) was omitted by Finance Act, 2013 (XXII Of 2013) and the exemption available under Notification dated 26 08 2011 is also not available to the University for the tax periods from July, 2015 to June, 2016.

24. The learned representative of the respondent referred Clause (126) of the Second Schedule to the Income Tax Ordinance, 2001 which provides that *"Any income of a public sector university established solely for educational purposes and not for the purposes of profits, with effect from the first day of July, 2013"*. This provision was not considered by the Assessing



Officer as well as Commissioner (Appeals). There are some other provisions in the Income Tax Ordinance, 2001 dealing with tax credit and exemption i.e. section 100C, Section 159 and sub section (36) of section 2 of the Income Tax Ordinance, 2001 which were neither referred by the parties nor the same was considered by the Assessing Officer as well as Commissioner (Appeals).

25. Apparently the assessment order was passed only on the basis of registration of the appellant without properly determining the nature of services provided or rendered by the appellant. The Assessing Officer in para 4 of his written submissions submitted that respondent has provided a confirmation letter of Dow University endorsing the services received from respondent which shows that out of nine services five falls under the category other than construction services, 9824.0000. The Commissioner (Appeals) allowed exemption treating the Dow University as government entity and relying upon clause (92) of the Second Schedule of the Income Tax Ordinance, 2001 which was omitted by the Finance Act, 2013 (XXII of 2013) and was not available on the statute book. Both the order suffers from legal infirmities and are not sustainable in law.

26. In view of the above discussions both order in original and order in appeal are set aside. The case is remanded to the Assessing Officer for passing fresh assessment order after affording proper opportunity of hearing to the parties and after properly determining the nature of services provided or rendered by the appellant and the exemption if any available on the services provided by the appellant.

27. The appeal is disposed of in the above terms. The copy of the order may be provided to the authorized representatives of the parties.

(Agha Kafeel Barik)
TECHNICAL MEMBER

(Justice [©] Nadeem Azhar Siddiqi)
CHAIRMAN

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Karachi. Dated: 17.05.2019

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

Order Dispatched on

20/5/19
Registrar

28/5/19
Registrar

Copies supplied for compliance:-

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

Copy for information to:-

- 3) The Commissioner (Appeals-II), SRB, Karachi.
- 4) Office copy
- 5) Guard file.

