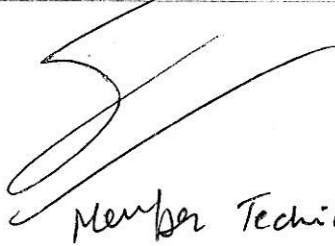


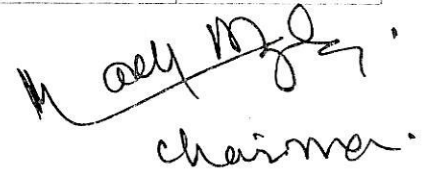
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ANNEXURE "A"

LIST OF APPEALS

S. No.	Appeal No.	Appellant Name	Order in Original No.	Order in Appeal No.
01	61/2018	M/s JSN Traders	72/2017	148/2018
02	62/2018	M/s Labbaik Traders	67/2017	149/2018
03	63/2018	M/s Memon Traders	68/2017	153/2018
04	64/2018	M/s Anwar & Brothers	77/2017	160/2018
05	66/2018	M/s Ibrahim & Brothers	70/2017	157/2018
06	67/2018	M/s Naqi Traders	71/2017	159/2018
07	71/2018	M/s A&S Traders	73/2017	161/2018
08	72/2018	M/s Memon Traders	84/2017	162/2018
09	73/2018	M/s Alam & Brothers	82/2017	168/2018
10	74/2018	M/s Danish Agency	80/2017	165/2018
11	78/2018	M/s M. Mubbashir Traders	86/2017	175/2018
12	79/2018	M/s Raza Traders	78/2017	174/2018
13	80/2018	M/s M. Ezzan & Brothers	83/2017	176/2018
14	89/2018	M/s Nazar Shakeel & Brothers	79/2017	181/2018
15	90/2018	M/s Attari Traders	69/2017	193/2018
16	91/2018	M/s Hashmat & Sons	81/2017	196/2018
17	94/2018	M/s Al Qarib Traders	85/2017	199/2018
18	95/2018	M/s K.K. Traders	76/2017	198/2018


Member Technical


Chairman

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT- 61 /2018

M/s JSN Traders, Hyderabad.....Appellant

Versus

Assistant Commissioner, SRB, Karachi.....Respondent

Mr. Asif Haroon, FCA Mr. Uzair Mem on, ACA and Ms. Motia Badruddin, ACA
for Appellant.

Mr. S. Rizwan Ali, DC-SRB for Respondent.

Date of Filing Appeal: 17.09.2018

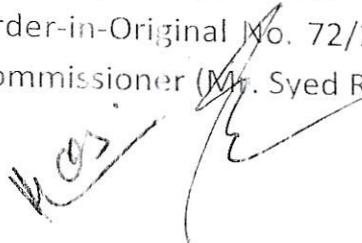
Date of hearing: 16.11.2018

Date of Order: 22.11.2018

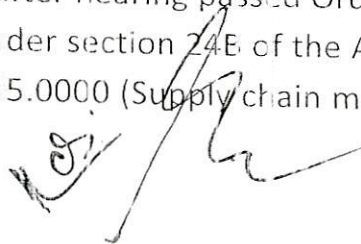
ORDER

Justice[®] Nadeem Azhar Siddiqi: By this common order we intend to decide appeals eighteen in number the details of which are mentioned in Annexure "A" attached with this order filed by various appellants (distributors of Colgate Palmolive) against the Order of their Compulsory Registration under section 24B of the Sindh Sales Tax on Services Act, 2011. For the purpose of this order the facts mentioned in the leading Appeal No. AT-61/2018 has been taken.

01. This appeal has been filed by the appellant challenging the Order-in-Appeal No.148/2018 dated 27.08.2013 passed by the Commissioner (Appeals) in Appeal No. 134/2017 filed by the Appellant against the Order-in-Original No. 72/2017 dated 07.08.2017 passed by the Deputy Commissioner (Mr. Syed Rizwan Ali) SRE, Karachi.



02. The facts of the case as mentioned in the Order-in-Original are that the appellant is engaged in providing or rendering taxable services of distribution of goods/products of companies/manufacturer including Colgate-Palmolive (Pakistan) Limited in Sindh falling under Tariff Heading 9845.0000 (Supply chain management or distribution (including delivery) services of the 2nd schedule of the Sindh Sales Tax on Service Act, 2011 (herein after referred as the Act) and chargeable to Sindh Sales Tax on Services @ 13% .
03. It was alleged in the Order-in-Original that the appellant is engaged in economic activity in terms of section 4 of the Act and provided services in terms of section 3 of the Act and being a resident required to apply for registration under section 24 of the Act, but failed to get e-registration with SRB and has also not deposited SST.
04. A show-cause notice dated 02.05.2017 was served upon the appellant to explain as to why it should not be compulsorily registered under section 24B of the Act and why penalties should not be imposed.
05. The appellant filed its reply dated 08.05.2017 through Yousuf Moosa and Company. In the reply it was stated that the appellant is a distributor and is subject to Federal Sales Tax. It was also stated that the appellant is not engaged in rendering any service including delivery service apart from being distributor and not liable to deposit SST.
06. On 01.06.2017 Mr. Zubair Ahmad Memon and Mr. Salman Yousuf appeared before the Officer, SRB for hearing and agreed in principle that the person is providing service of distribution, but also raised concerns that in case of registration with SRB for SST the person shall be bound to pay double tax on their margin/.consideration/discount allowed by the manufacturer against this distribution activity.
07. The Officer after hearing passed Order of Compulsory Registration of the appellant under section 24B of the Act for the service falling under Tariff Heading 9845.0000 (Supply chain management or distribution (including

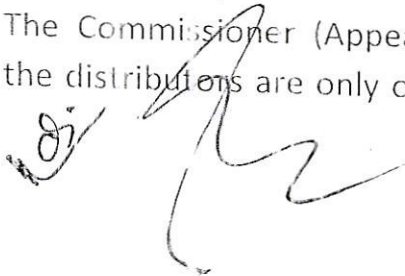


delivery) services of the 2nd schedule of the Sindh Sales Tax on Service Act, 2011 and also imposed penalty of Rs.10,000/= and in case of non-compliance of the order for compulsory registration to pay penalty of Rs.100,000/=. –

08. The appellant challenged the said order of compulsory registration by way of filing appeal before the Commissioner (Appeals), who maintained the order of compulsory registration, hence this appeal.

09. Mr. Asif Haroon learned Representative of appellant submitted that all these appeals relate to compulsory registration under section 24B of the Sindh Sales Tax on Services Act, 2011. He further submitted that issue involved in all these appeals is whether the goods sold / supplied by Colgate-Palmolive (Pakistan) to appellant is a sale as provided under the provisions of Sales Tax Act 1990 and Sales of Good Act, 1930 or a service under the provisions of Sindh Sales Tax on Services Act, 2011. (Emphasis supplied) He then submitted that essential ingredients of sale are transfer of ownership of goods from seller to purchaser/buyer and transfer of risk and reward and once the risk and reward is transferred the sale become absolute. He also submitted that once the goods sold become the property of buyer and to protect and safe guard such goods is the responsibility of the buyer and in case of any loss to the goods the seller will not be responsible to compensate the buyer and referred to clause 12 of the Agreement of Labbaik Trader and placed the copy of the same on record. He also submitted that over and above the price paid to seller the buyer is entitled to resell the same and is entitled to the reward arising out of such resale.

10. Mr. Asif Haroon also criticized the order in appeal and submitted that distributors are of two types, (1) those who only deal on commission basis and do not possess and own the goods and (2) the distributors who purchased goods and the ownership of the same is transferred to them and they are entitled to risk and rewards attached to such goods. The Commissioner (Appeals) has wrongly/erroneously concluded that the distributors are only of one type, which provide service to principal



and for that purpose the Commissioner (Appeals) relied upon an Indian Judgment reported as 1988(19) ECR 188 Bombay, 1988(37)ELT 547 Bon, New India Industries Ltd. versus Union of India, of Bombay High Court (copy placed on record). He then referred to page 8 of order in appeal and submitted that the definition of distributors quoted by Commissioner (Appeals) support his contention that the distributors are of two types. He then referred to page 15 of the order in appeal and submitted that the appellant is not reselling the goods on account/behalf of or as an agent of seller/manufacturer to retailers or end user. He also placed on record summary of Arguments.

11. Syed Rizwan Ali, the learned DC submitted that the relationship between the appellant and Colgate Palmolive (Pakistan) is covered under a written agreement and the appellant was appointed and termed as distributor in the agreement and from reading the various clauses of the agreement it is clear that appellant was appointed distributor to sell the goods of principal. He then submitted that none of the clauses in the agreement provides transfer of ownership of the goods from seller to buyer. He also submitted that from reading the various clauses of the agreement it appears that no exclusive rights in the goods has been transferred by the seller to the buyer and the goods remain the property of the seller. He then submitted that appellant/distributor is providing services to manufacturer for sale of its goods against consideration in the form of discount and is liable to pay Sales Tax on Services.
12. Mr. Syed Rizwan Ali DC-SRB further submitted that all appeals related to compulsory registration under section 24B of the Act on the basis of Agreement between the appellant and Colgate Palmolive (CPO) and in terms of agreement the relationship between the appellant and CPO is of Principal and Distributor and on the basis of agreement the appointment was made exclusively as distributor.
13. He then referred to the preamble of the agreement and clauses 2, of Agreement between CPO and Nazar Shakeel and Bros (A-89/2018) which clause provides assignment of exclusive territory in which the

services have to be provided (copy placed on record). He then submitted that under the terms of agreement the appellant is bound to act on the instructions of the principal M/s Colgate and cannot act according to its desire which includes fixation of price and allowing the percentage of margin / profit to retailer. He then referred to clauses No.5, 7, 9, 11, 14, 21, 22, 23 of the agreement and submitted that the appellant is bound to act on the instructions of the Principal/CPO regarding fixation of price, maintaining the stock and other items mentioned in the agreement. He then submitted that ownership of goods was never transferred from manufacturer to distributor/appellant. The act performed by the appellant is purely providing services to its principal and the supplies are not involved and no tax has been levied on supply of goods.

14. Mr. Rizwan then referred to tariff heading 9845.0000 [supply chain management or distribution (including delivery) services] of the Second Schedule and submitted that this is a taxable service as provided under section 3 of the Act of 2011. On a question from the Tribunal he informed that neither the definition of supply chain management or distribution (including delivery) services is provided in the definition clause of the Act nor any rule has been framed. He then submitted that compulsory registration was made on the basis of contents of agreement under a specific tariff heading 9845.0000 of 2nd Schedule to the Act which provides that "distribution" (including delivery) is a taxable service. He then submitted that no document to prove/show the trading business has been produced before the Assessing Officer or before the Commissioner (Appeals). He then submitted that mere filing of GST returns by CPO and appellant does not absolve the appellant from the chargeability of Sindh Sales Tax on Services.

15. Mr. Asif Haroon in rebuttal submitted that in the agreement the word principal has not been used. The territory was not restricted in the agreement and risk and reward has been transferred despite of specifying the territory. He then referred to clause 3 of the agreement of Nazar Shakeel and Brothers and submitted that this clause is sufficient

to establish that risk and reward was transferred and sale becomes absolute. He then referred to clause 16 of the agreement and submitted that this clause is very clear regarding transfer of risk and reward. He also referred to the definition of taxable supply provided in the Sales Tax, 1990 and dictionary meanings of sale available in various dictionaries in support of his contention that the appellant is not providing any service but involved in sale of goods. He then referred to section 18 and 19 of Sindh Consumer Protection Act 2014, which provides for the protection of consumer.

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

16. The dispute is whether the goods sold/supplied by Colgate-Palmolive (Pakistan) to appellant is a sale of goods as provided under the provisions of Sales Tax Act 1990 and Sales of Good Act, 1930 or a service under the provisions of Sindh Sales Tax on Services Act, 2011. (Emphasis supplied). Both the parties have divergent views. The controversy is to be decided in view of the provisions of the Sindh Sales Tax on Services Act, 2011. It is not disputed that after 18th Amendment in the Constitution of Pakistan the provincial legislatures were authorized to levy tax on services. Words "Distributor, Sale, Supply Chain and Taxable Supply have not been defined in the Sindh Sales Tax on Services Act, 2011. Whereas all these words are defined in the Sales Tax Act, 1990. The service has been defined in sub-section (79) of section 2 of the Act, which provides that "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 First Schedule to this Act. Explanations are also attached to this definition, which provides I) A service shall remain and continue to be treated as service regardless whether or not the providing thereof involves any use, supply, disposition or consumption of any goods either as an essential or as an incidental aspect of such providing of service; II) Unless otherwise specified by the Board, the service or services involved in the supply of

goods shall remain and continue to be treated as service or services. Reading section 3 of the Act with the Tariff heading 9845.0000 [supply chain management or distribution (including delivery) services] it appears that the distribution including delivery service is a taxable service under the Act, 2011.

17. The Commissioner (Appeals) has also dealt with the issue as under:
9. "Now, coming back to the case of the Appellant, its online profile of FBR web-portal has been perused which reveals that the Appellant is registered with the FBR under the Act-1990 as 'Importer/Exporter/Distributor'. In this regard, the Appellant has admitted that it does not deal in any activity of import and export business. Therefore, it is clear that the Appellant is not a manufacturer, importer and exporter or possesses any other category except as a 'distributor' under the Act-1990. It is appropriate to reproduce the definition of "distributor" as specified in section 2(7) of the Act-1990 of ready reference:-

2(7) 'distributor', means a person appointed by a manufacturer, importer or any other person for a specified area to purchase goods from him for further supply and includes a person who in addition to being a distributor is also engaged in supply of goods as a wholesaler or a retailer".

10. From the above definition of section 2 (7) of the Act -1990 it is clear that a distributor is appointed by a manufacturer, importer, or any other person for a specified area to add value in a transaction for the purpose of subsequent delivery to other persons.

11. Now, for the purpose of understanding the meaning of the tariff heading 9845.0000 "supply chain management or distribution (including delivery) services" of the Second Schedule to the Act-2011, I am obliged to refer to the dictionary meaning of the same in this connection. The tariff heading encompasses a hybrid definition in a sense that the first part starts with the words "supply chain", the second part covers "delivery services" and the third part is expanded to the services of "distribution".

12. In Cambridge dictionary, the word "supply chain" has been defined to mean "the system of people and organization that are involved in getting a product from the place where it is made to customers". In Collin's dictionary "supply chain" is defined to mean "a channel of distribution beginning with the supplier of materials or retailer, and ultimately to the

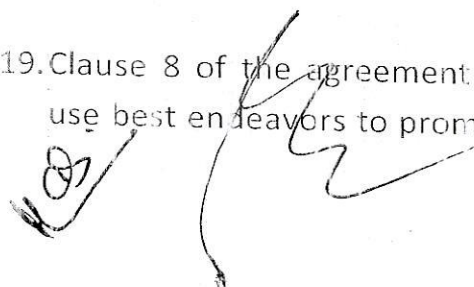
customer". In Black's Law Dictionary, "supply chain" has been defined to mean "the complete network of bodies that are either directly or indirectly linked or dependent in serving the same customer. It will comprise the vendors of raw material, Production Company, storage warehouse, distribution centers and the retailers".

13. In Cambridge dictionary, the word "distribution" has been defined to mean "the process of transporting products from a manufacturer, storing them, and selling them to different stores and customers". In Collin's dictionary, "distribution" is defined to mean "the process by which commodities get to final consumers, including storing, selling, shipping and advertising".

14. Now, if these meanings are read with the facts and circumstances of the instant case it will be understood that the transaction involved comprises of the activities more than the mere activities of distribution or the deliver services. And the nature of transaction in hand can be determined by the terms and conditions of the Agreement which is evident and is explanatory of the same. In other words, the spirit underlying the value addition is founded on the fact that the Appellant providing or rendering services as a distributor are not self-consumed and the services are rendered or delivered in furtherance of an activity in a supply chain management. The appellant is to act as a distributor and to use its facility to store the products on behalf of the Manufacturer and further the Appellant has to use its resources for delivery and distribution of the product to the market level.

18. The appellant under an agreement has been appointed Distributor to deliver the products of Colgate Palm Olive (CPO). The preamble of the agreement (Labbaik) provided that the appellant was appointed "distributor" of all products of (CPO). The preamble of the agreement (Nazar Shakeel & Bros.) provided that the said Nazar Shakeel and Bros. was appointed "distributor" for all products manufactured & traded by the Company/CPO. The distribution of goods on behalf of appellant is a service under the Act of 2011 and the Commissioner (Appeals) has rightly treated it as service.

19. Clause 8 of the agreement of Labbaik provides that the appellant will use best endeavors to promote and increase sale of products. The same



clause further provides that the appellant will maintain adequate stocks of CPO to ensure prompt deliveries to customers. This clause makes it clear that despite the fact that on payment the ownership of goods was transferred to the appellant along with the element of risk and reward the fact remains same that the sale of goods by CPO to the appellant is not a simple sale and the appellant is required to deliver the goods as per instruction of the CPO. Under the agreement the appellant is required to use best endeavors to promote sale, which may not be a pre-condition in an ordinary sale of goods. Furthermore in this clause word "deliveries" was used and not sale, which clearly reflects that the appellant has to deliver goods to the customer and not to sell the goods. Clause 15 of the agreement provides that the appellant will submit daily, weekly, fortnightly, and or monthly stocks report as may be required by the CPO. In case of simple sale this clause is unnecessary and the purchaser of goods is not required to maintain stock and to submit reports. Clause 16 of the agreement provides that at the time of termination of agreement products lying un-sold will be taken back at the discretion of CPO. This clause negates the arguments of the appellant that the goods become the property of the appellant. In normal sale the return of goods may not be a condition.

20. Even if it is considered that on payment of consideration by the appellant the goods become its property and ownership along with risk and reward transferred to the appellant one thing is clear that the appellant cannot exercise full control over the goods and is bound by the instruction of CPO regarding sale, fixing of price and the area in which the goods are to be sold. In this case the appellant as distributor acquired goods against cash consideration or credit for supplying to the whole sellers or retailers and in this way he supplied goods of its principal against fixed margin.
21. From the contents of the agreements produced before us the substance of the same appears to facilitate sale and delivery of goods and not simple sale of goods. It is now well settled point of law that while construing an instrument/document whole document is to be read and

considered to ascertain the scope and object of the instrument/document. It is also now well settled principle of law that for determining the true purpose of the instrument/document one must look into its substance and not the form. In the reported judgment in the case of Kamran Industries versus Collector of Customs, PLD 1996 Karachi Page 68 a Honorable DB of Sindh High Court has held that "That a statute/instrument/document is to be read as whole, and an attempt has to be made to reconcile various clauses for a rationale meaning, while avoiding redundancy to any part thereof. In the other reported judgment in the case of Habib Insurance Limited versus Commissioner of Income Tax (Central), Karachi PLD 1985 Supreme Court Page 109, it has been held that "It is true as contended by the learned counsel for the appellant that in Revenue cases one must look at the substance of thing and not at the manner in which the account is stated".

22. In view of the above discussion all appeals listed in the attached Annexure "A" are dismissed. The copies of the orders may be provided to the learned authorized representative of the parties.


(Agha Kafeel Barik)
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi

Dated: 22.11.2018

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.