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BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DB-1

APPEAL NO. AT-65/2018

M/s Falcon-I (Pvt.) Ltd.
Karachi.....Appellant

Versus

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

Date of Filing of Appeal: 18.09.2018
Dated of Hearing of Appeal: 23.12.2020
Date of Order: 25.01.2021

APPEAL NO. AT-110/2018

M/s Falcon-I (Pvt.) Ltd.
Karachi.....Appellant

Versus

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

Date of Filing of Appeal: 58.11.2018
Dated of Hearing of Appeal: 23.12.2020
Date of Order: 25.01.2021

Mr. S. M. Rehan, FCA and Mr. Ahsan Iqbal ITP for the appellant.

Malik Naeem Iqbal Advocate, Mr. Muhammad Nasir Advocate along with Mr. Zameer Khalid (Commissioner) Legal, Mr. Zain Manzoor, AC,

Ms. Uzma Ghory, AC-DR, Ms. Anum Sheikh AC, Mr. Liaqat Ali Bajeer, AC, and Mr. Darban Ali, SSTO for SRB/respondent.

ORDER

Justice ® Nadeem Azhar Siddiqi: Both these appealswere filed by the appellant challenging the Order-in-Appeal (OIA) No.164/2018 dated 14.09.201d and OIA No. 216/2018 passed by the Commissioner (Appeals) in Appeal No. 140/2018 and 189/2018 respectively filed by the appellant against the Order-in-Original (OIO) No. 488/2018 dated 15.05.2018 and OIO No. 796/2018 dated 22.09.2018 respectively passed by the Assistant Commissioner (Mr. Vickey Dhingra), Unit-1, SRB, Karachi.

02. The facts and point of law involved in both the appeals are same except for the tax periods thus both the appeals are decided by common order. The facts mentioned in Appeal No. AT-65/2018 were taken into consideration for arriving at such decision. The tax periods involved in Appeal No. AT-65/15 were from July, 2011 to June, 2014 and the tax periods involved in Appeal No. 110/2018 were from July, 2016 to June, 2017 respectively.

03. The brief facts as stated in the OIO No. 488/2018 dated 15.05.2018 were that the applicant was registered with SRB on 11.11.2011 and engaged in providing and rendering the taxable service of Telecommunication including Vehicle Tracking Services falling under Tariff Heading 98.12 (Telecommunications services) read with sub-Tariff Heading 9812.9490 (vehicle tracking services) of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act).

04. It was alleged in the OIO that during the scrutiny of the audited financial statement of the appellant for the years ended June, 2012, June 2013 and June, 2014 (i.e. tax periods from July, 2011 to June

2013) it was revealed that appellant had received the consideration of Rs.539,967,232/= involving Sindh Sales Tax (SST) of Rs.105,293,610/=. Whereas the appellant had only declared output tax of Rs.52,138,279/= thus it had short declared the SST of Rs.53,155,331/=. The details of the receipt and its heads are reproduced as under:

Description	2011-12	2012-13	2013-14	Total
Monitoring Fees	58,747,790	83,712,131	93,168,553	235,628,474
Equipment Hire	93,246,102	104,343,718	102,103,786	299,693,606
Other Services	1,246,536	2,193,253	1,205,363	4,645,152
Total	**153,240,428**	**190,249,102**	**196,477,702**	**539,967,232**
SST @ 19.5%	29,881,883	37,098,575	38,313,152	105,293,610
Less: Output Tax declared	(11,007,870)	(17,384,897)	(23,745,512)	(52,138,279)
Short Declared/ Paid	**18,874,013**	**19,713,678**	**14,567,640**	**53,155,331**

05. It was further, alleged that during the said tax periods the appellant had claimed or adjusted the input tax amounting to Rs.15,082,819/-which was inadmissible in terms of section 15 of the Act. It was also alleged that the appellant despite imposition of penalties for late filing of returns and late deposit of SST had failed to file returns and deposit SST which tantamounts to repetition of offense and was thus punishable vide serial No.13 of the Table under section 43 of the Act.

06. The appellant was served with a Show-Cause Notice (SCN) dated 12.0.9.2017 under section 23 (2) of the Act calling it to explain as to why SST amounting to Rs.53,155,331/- may not be assessed and recovered.Furthermore it was confronted as to why default surcharge under section 44 of the Act and penalties prescribed under Serial No.3 of Table under section 43 of the Act may not be imposed and the inadmissible input tax amounting to Rs.15,082,819/- may not be disallowed and recovered along with default surcharge under section 44 of the Act and penalties prescribed under Serial No.3 of Table under Section 43 of the Act. The applicant was further called upon to

explain as to why the penalties under Serial No.02 03, 11, 13, and 15 of Table under section 43 may not be imposed for non-filing of returns and non-payment of tax along with default surcharge under section 44 of the Act.

07. The appellant though its representative's letter dated 08.11.2017 contended that, in addition to vehicle tracking services, the appellant had installed trackers on rental basis instead of outright sale. Such rental of equipment is classified as "Equipment Hire" in the financial statements and the same is distinct from vehicle tracking services and, hence, the same was not chargeable to the SST.

08. The department served another SCN upon the appellant dated 25.04.2018 purportedly in continuation of earlier SCN dated 12.09.2017. It was alleged therein that the value of taxable services was the gross amount received by the appellant including cost of device used in providing tracking services which would form part of value of taxable services provided by the appellant as the same were never sold independently from tracking services. However the appellant was asked to explain as to why an amount of Rs.136,269,715/= may not be assessed under section 23 (2) of the Act alongwith default surcharge and penalties on this account.

09. The respondent submitted reply on 10.05.2018 stating therein that it had declared the salvage value of transfer of ownership of equipment in its annual audited accounts under the head of sales, and tax was paid therein to FBR. It was further stated that in certain cases the monitoring services were provided to customers who had their own device. It was also submitted that transfer fee for removal of any device from one car and its installation in another car was not taxable during the tax periods from July, 2011 to June, 2014. However the same was made taxable effective from July, 2015 vide Tariff Heading 9839.0000 (Erection commission and installation services).

10. The AO finally passed OIO holding that the services provided or rendered in respect of telecommunication including tracking service were chargeable to the SST under section 8.3 of the Act read with Tariff Heading 98:12 and sub-tariff heading [9812.9490] of the Second Schedule to the Act. Moreover the SST was determined thereon at Rs.79,945,920/= alongwith default surcharge and penalties under serial No. 2 and 3 of the Table under section 43 of the Act amounting to Rs.500,76,59/= and further default surcharge was imposed at Rs.516,408/=.

11. The details of services taxed were as under:-

Description	2011-12	2012-13	2013-14	Total
Tracking Device	41,566,641	43,556,997	51,146,077	136,269,715
Monitoring Fees	58,747,790	83,712,131	93,168,553	235,628,474
Equipment Hire	93,246,102	104,243,718	102,103,786	299,293,606
Other Services	1,246,536	2,193,253	1,205,363	4,445,152
Total	**194,807,069**	**233,806,099**	**247,623,779**	**676,236,947**
SST @ 19.5%	37,987,378	45,592,189	48,286,637	131,866,205
Less: Output Tax Declared	(11,007,870)	(17,384,897)	(23,745,512)	(52,138,279)
Short Paid	**26,979,508**	**28,207,292**	**24,541,125**	**79,727,926**
Add: Inadmissible Input Tax				217,994
Sindh Sales Tax Payable				**79,945,920**

12. The Appellant challenged the OIO by way of filing appeal before the Commissioner (Appeals) who maintained the OIO to the extent of taxing equipment rental/hire, transfer of equipment charges, activation fees, salvage charges and sale of tracking devices. Resultantly the appellant has challenged the OIA before this Tribunal.

13. The learned representative of the appellant submitted that the SRB could not legally claim SST on sale of tracking devices since the same fall within the category of goods upon which the tax was levied and paid under Sales Tax, Act 1990 (STA 1990). Moreover the Tracking Device (device) was covered under the definition of goods provided in sub-

section (48) of section 2 of the Act and the SST was erroneously levied on renting of tracking equipment which was not a taxable activity for the tax periods July, 2011 to June, 2015. However no specific tariff heading was available in the Second Schedule to the Act to tax the same and representative of the appellant referred to the description of Tariff Heading 9812.9490 (vehicle tracking services) and submitted that only vehicle tracking services could be taxed during the above tax periods. He submitted that the tax could not be levied on equipment rental/hiring service under Tariff Heading 9812.9490 prior to tax periods July, 2015 since such activity was not covered under Tariff Heading 9812.9490.

14. The learned representative of the appellant further submitted that the description of original Tariff Heading 9812.9490 was "Vehicle Tracking Services". The above said description was altered/amended vide Sindh Finance Act, 2015 effective from 10th July, 2015 and after alteration it read as "vehicle {and other} tracking services" having no retrospective effect and the Tariff Heading in the present form was not available for the tax periods from July, 2011 to June, 2015. He further contended that appellant had not claimed any input tax from SRB on purchase of tracking devices and input claimed by the appellant was erroneously disallowed. He further submitted that the appellant was depositing SST on Monitoring fee and other services and the dispute only remained in respect of sale of tracking devices and equipment rental/hire.

15. The learned AC for the respondent initially submitted that appellant had only deposited SST on Monitoring fees and had not deposited SST on sales of tracking devices, equipment hire charges and other services, like transfer and removal of tracking devices, activation charges, and other miscellaneous receipts. He contended that SST had to be paid to SRB on the basis of composite transaction of sale of tracking device and charges for rendition of tracking services as in the contract the dominant factor was to provide service and not sale of devices. He further contended that though SRB can tax services but if the goods were part of a taxable service, SRB could levy SST on composite service including the cost of goods. He referred to the judgment of Lahore High

Court in the case of Pakistan Telecom Mobile limited (U Phone) Verses FOP PTD 2017-2296 and submitted that tracking devices was part of service and dominant factor of the transaction was to provide service and not to sell the tracking devices. He further contended that appellant does not separately sell tracking devices in the market but it supplied tracking device as part of tracking services. He further contended that appellant charged depreciation on tracking devices in their financial statements and in case of sale of tracking devices the appellant could not charge depreciation. He further highlighted the example of restaurants where SST was payable on goods (food items) as well services @ 13% under the Act instead of 17% under STA, 1990, and the SST was payable on the gross amount received by the appellant. He further contended that cost of device in providing of service was around 20% as against which the cost of services were provided.

16. The learned advocate for the respondent Mr. Naeem Iqbal subsequently appeared and contended that vehicle tracking device was an essential part of tracking services without which the services could not be provided. The SST was to be levied on the basis of principal activity and he referred to section 4(1) (b) of the Act and submitted that supply of movable property by way of lease, license and similar arrangements was part of economic activity and service was to be taxed as a whole on gross price. He also referred to section 5 of the Act and submitted that the value of services was to be determined on the basis of consideration in money including all federal and provincial taxes, which were received from the recipient by the person providing a service, excluding the amount of sales tax under the Act.

17. He further contended that the SST was levied in VAT mode and the appellant was entitled to claim input tax adjustment on the basis of tax paid to FBR. He further referred to sub-rule (3) of rule 35 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) and submitted that the Rules provided adjustment of input tax paid on procurement of any equipment or the sales tax paid on acquiring services in connection with the providing of

telecommunication services. The principal economic activity of the appellant was providing vehicle tracking services and the dominant feature of the transaction was to provide services and the SST was payable on gross amount. The learned advocate for the appellant relied upon the following case laws:-

i) Association of Builders and Developers, 2018 PTD 1487 relevant para 39-40 page 1519 & 1520. (On the point of Dominant Factor was a recognized factor).

ii) Pakistan International Freight Forwarders Association, relevant para 49 page 43-44. (Principal of Pith and Substance). In case of dispute the court was required to see the pith and substance of transaction as both the laws had to exist together.

iii) 1999 PTD 3421- Kolkata HC relevant page 3423- last para- relating to exemption. Predominant object was to be seen and considered.

iv) S. Imtiaz Ali V/s Chairman Income Tax Appellate Tribunal, 2019 SCMR 1034. (Dominant factor in tax matter was Pith and substance).

v) Pakistan Telecom Mobile, 2017 PTD 2296- relevant Para 34.

vi) Income Tax Report (India) volume 159 page 01- page-06 (predominant factor-whether the organization is charitable or profitable).

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18. Mr. S.M. Rehan the learned representative of the appellant in rebuttal submitted that in Para 6 of the ground of appeal it was mentioned that the tax periods from July, 2011 to August, 2012 were time barred under section 23 (2) of the Act, which provided an initial period of five years for issuing SCN, whereas in the instant case first SCN was issued on 12.09.2017 and subsequent SCN was issued on 25.04.2018.He further submitted that the appellant was only charging depreciation on tracking devices which were given on hire to clients and no depreciation was charged on the devices which were sold. The provincial legislature was neither vested with the power to tax

goods or supplies norhad intention to tax goods or supplies used in providing taxable services and for that reason there is no specific provision in the Act in this regard.The appellant also sold tracker devices to customers without providing any service, and such fact was ignored while passing assessment order/OIO. He also contended that cost of tracking devices was more than the cost of service and the dominant feature in the transaction was sale of device and not service. He further contended that on service of cars the tax on parts is payable to FBR @17% and on services the tax is payable to SRB @ 13% and both taxes are separately mentioned in one invoice.He further submitted that sale of device had nothing to do with providing or rendering of services and the definition provided in Para 28 of OIO dealt with tangible goods.

19. The learned representative of the appellant also filed a statement distinguishing the facts of instant case from that reported as 2017 PTD 2296 (M/s Pak Telecom Mobile Ltd. (U Phone) versus Federation of Pakistan (relating to Sales Tax Act 1990). The facts of the reported case were that FBR had levied sales tax on sale of SIM cards. The LHC at page-Para 32 of the decision had held that SIM card was considered part and parcel of services provided and the dominant position of transaction was to provide services and not the sales of SIM cards. He further contended that for selling SIM cards the license from Pakistan Telecommunication (PTA) was required, whereas for selling tracker device no license was required from any Authority. He further contended that ownership of SIM card was not transferable, whereas the ownership of tracking device could be transferred. He stated that once tax was paid the tax payer could not be asked to pay again and relied upon un-reported judgment of Single Bench of Lahore High Court in the case of M. Usman Qayyum v/s Federation of Pakistan. CP No. 131594/2018.

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

21. The dispute related to charging of SST on the cost of tracking device used in providing taxable services of vehicle tracking, the rental of tracking device as the part of service specified in Tariff Heading

9812.9490 monitoring fees, and other services.The tax was charged on the gross amount received by the appellant, which included cost of device, monitoring fee, equipment rental/hire and other charges. The AO worked out the SST at Rs.79,727,926/= whereas Mr. Vickey Dhingra, AC during hearing held on 11.02.2019 submitted that for the tax periods from July, 2011 to June 2012, the SST on monitoring fees was worked out to Rs.11,455,819/= out of which an amount of Rs.11,007,870/= was paid leaving anoutstanding balance of Rs.447,949/=.

22. The appellant had paid the SST on vehicle tracking services (monitoring services), but disputed the payment of SST on sale of tracking device and other services. The SCN was issued and SST was charged under main Tariff Heading 98.12 (Telecommunication Services) read with sub-Tariff Heading 9812.0490 (vehicle tracking services) (old provision).

23. Initially the description of the Tariff Heading 9812.9490 was "vehicle tracking services" and the said description was amended/altered vide Sindh Finance Act, XXXVI of 2015 effective from 10th July, 2015 and after alteration the description read as "vehicle [and other] tracking services". It is apparent from the above description that for the tax periods from July, 2011 to June, 2015 only the vehicle tracking service was taxable and the other services even if provided or rendered by the appellant were not taxable. A Service could be subjected to SST under a provision of law, which is un-ambiguous and clear. There is no room for any intendment and there is no presumption as to tax. The revenue is required to establish that a transaction fell within the parameters of taxable service listed in the Second Schedule to the Act in furtherance of any economic activity.However the SST levied on the basis of some assumption or presumption was not warranted in law.

24. The Contention of the learned advocate for the appellant that all services provided and rendered by the appellant were taxable has no force. This point was considered by the Sindh High Court in the case of

Citi Bank NA versus Commissioner Inland Revenue, 2014 PTD 284 at page 295 wherein it was has held as under:-

> *"It will be seen that this description only listed the persons who were to provide the services enumerated under heading 98.13. This would satisfy only the first requirement of the definition in section 2(16a), since banking companies and NBFIs were listed in the description. However, this had nothing to do with the services that were actually liable to duty. The attempt by learned counsel to conclude from the enumeration of the persons that all the services provided by them were included in heading No. 98.13 cannot be accepted. This would render otiose the listing of specific services in the various sub headings".*

25. Section 3 of the Act provides that a taxable service is a service listed in the Second Schedule to the Act, and for taxing any service it is mandatory that the same should be un-ambiguously listed in the Second Schedule to the Act. It is evident that only vehicle tracking service was part of Second Schedule to the Act for the tax periods from July 2011 to June 2015. The Appeal No. AT-65/2018 was related to the Tax periods from July, 2011 to June, 2015 and for that periods the SST was payable only on tracking services/monitoring services.

26. The description of Tariff Heading 9812.9490 was changed after the alteration effective from 10th July, 2015 and it read as (vehicle [and other] tracking services). It is apparent that by adding the words "and other" other services connected with providing vehicle tracking services were added to the tax net and SST could be charged thereon with effect from 10th July, 2015. The equipment rental and other services had become part of the vehicle tracking services and were thus chargeable to SST thereafter. It is therefore apparent from this amendment that levying of SST on other services before 10th July, 2015 by AO was not warranted in law.

27. The other plea of the department was that the SST was payable on the gross amount received by the appellant which included cost of services plus cost of goods. However, after hearing the parties at length we have framed the following point:-

"Under what provision of Sindh Sales Tax on Services Act, 2011 read with Entry No. 49, of the Part I of the Fourth Schedule of the Constitution, 1973 the SRB was claiming/demanding Sindh Sales Tax on the component of goods as well as supplies".

28. It is not understandable as to how the sale of device fall within the ambit of providing or rendering service. The words used in a statute are to be interpreted keeping in view the purpose of the statute. The Act was enacted to provide the levy of tax on services provided, rendered, initiated, received or consumed in the province of Sindh. The preamble of the Act provide as under:

"Preamble.—WHEREAS in accordance with the Constitution of the Islamic Republic of Pakistan, 1973 the imposition, administration, collection and enforcement of the taxes on services is the prerogative of the provinces".

"Whereas it is expedient to provide for the levy of a tax on services provided, rendered, initiated, received [, originated, executed] or consumed in the Province of Sindh and for all matters incidental and ancillary there to or connected herewith.

In the case reported as 2016 SCMR 447 of Director General FIA versus Kamran Iqbal, it was held, and the relevant paragraph is reproduced for ready reference as under:-

"Indeed, preamble to a Statute is not an operative part thereof, however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature. Reliance in this regard may be placed on the case of Muree Brewery Company Limited v Pakistan through Secretary Government of Pakistan and others (PLD 1972 SC 279). It is equally well established principle that while interpreting a, statute a purposive approach should be adopted in accord with the objective of the Statute and not in derogation to the same".

The right to levy SST on services was delegated to the provinces under Eighteenth Constitutional Amendment by creating an exception in Entry No. 49 of Part I of the Federal Legislative List, Fourth Schedule. The said entry 49 reads as under:

"49. Taxes on the sales and purchase of goods imported, exported, produced, manufactured or consumed [, except sales tax on services].

29. It is evident from above Entry that by an exception the provinces could tax the services only and such entry did not cover the taxing of sale of goods. In the reported judgment of Sindh High Court in the case of Pakistan International Freight & Forwarders Association 2017 PTD 1, in relation to Entry No. 49, it was held as under:-

"58.In our view, the "exception added to entry No. 49 is not a "true" exception. Rather, it is an independent provision in its own right. It has two primary effects. Firstly, and most importantly for present purpose, it recognizes expressly on the constitutional plane that a taxing power in respect of taxing event of rendering or providing of services vests in the Provinces.

This view gain further support from the recent decision of the High Court of Sindh in the case of Sami Pharma and others versus Province of Sindh and others, C.P. No. D- 5220/2017, wherein it was held as under:-

"12. The principles of delegated legislation are very clear and hardly require any reiteration. They are intended to enforce law and not to override it. In brief, they entitle the delegate to carry out the mandate of the legislature....."

30. In view of above decisions it is evident that levying of SST on sale of device was not proper and correct approach. The general rule is that words used in a statute must first be given their ordinary and natural meaning (PLD 1990 SC 68). It is only when such an ordinary meaning does not make sense then resort can be made to discover other appropriate meaning (PLD 1963 SC 137). It is a well-recognized principle of interpretation of statutes that a fiscal enactment should be construed strictly and whenever there is an ambiguity, the benefit of doubt should be given to the citizen/taxpayer. Again if two equally reasonable constructions are possible then construction favorable to citizen/taxpayer should be preferred.

31. The learned AC failed to appreciate that under the Act the tax was levied only on service and not on sale of goods or supplies. Sub-section (79) of section 2 of the Act provides as under:-

"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 of the Act.

It is clear from the definition of service that the sales and supply of goods cannot be claimed as service or part of service and tax cannot be levied thereon. An Explanation is attached to sub-section (79) of section 2 of the Act which read as under:-

"A service shall and continue to be treated as service regardless whether or not providing thereof involves any use, supply or consumption of any goods either as an essential aspect of such providing of service".

It is evident from the above explanation that the service is not to be treated as part of use, supply or consumption of goods. Similarly the use, supply or consumption of goods cannot be treated as part of service for the purpose of determining the value of service and levying SST. The Sindh Legislature by adding the above explanation has protected its interest in taxing a service and in case a service is a part of sale or supply of goods the same will remain as service for the purpose of SST. In presence of this explanation the test of dominant factor of a transaction could not be applied. However same position also applies to 'goods' and if the same are supplied with the service they will remain goods for the purpose of tax under the Act. The purpose of explanation is to facilitate proper understanding of a provision of law and to serve as guide line and not to enlarge the meaning of provision of law. This view gains support from the case reported as 2019 PTD 1, in case of Pakistan International Freight Forwarders Association, wherein it has been held as under:-

"58. .....*The Constitution recognizes a division of taxing power and that is all. The real effect of the "exception" is to "shift" the taxing power in relation to the taxing event of rendering or providing of services from the Federation to the Provinces.*

"59. The second effect of the "exception" though not directly relevant for present purpose, may also be adverted to. Entry 49 is concerned with; inter alia, the sale of goods. The taxing power in relation thereto vests solely in the Federation. The taxing power in relation to the

rendering or providing of services now vests solely in the Province".....

In the same judgment in para 61 it has been held as under:-

"61.....The 18th Amendment, by inserting the "exception" into entry No. 49 radically altered the position. The taxing power in relation to the aforesaid taxing event was "shifted" and "transferred" to the Provinces and now vests in them alone. This follows also from the constitutional principles noted above, namely that under the scheme of our Constitution there is only a division of taxing power and not a sharing thereof, and that for two taxing powers to have the same taxing event can mean only that the taxing powers are also the same.

32. In the light of the above decisions it is clear that there are two taxing powers. The taxing power relating to goods vests in the Federation and the taxing power relating to services vests in the Provinces and both could not share the same powers. The Provinces can neither levy tax on goods nor can claim the goods as part of service for the purpose of levying SST. In the reported case of Ummatullah Versus Province of Sindh, PLD 2010 K 236 it has been held as under:-

"It is a settled principle of law that what cannot be done directly cannot be done or allowed to be done indirectly. It is also trite principle of law; what is not possessed can neither be conferred nor delegated."

The Supreme Court in the reported judgment of SRB Versus Civil Aviation Authority, 2017 SCMR 1344 has held as under:-

"37. .....Whilst the provincial legislatures are independent, they must operate within the sphere allotted to them and within their prescribed limit. Neither the Federation nor the provinces should invade upon the rights of the other nor encroach upon the other's legislative domain".

33. The contention of the learned advocate for the respondent is misplaced that in providing taxable service if the goods were used or consumed the SST was payable on the gross value including the services provided and the goods used. We had already held that the Provincial Legislature is only authorized to levy SST on services. This view gains

support at 'para 9' of the recent judgment of the High Court of Sindh in the case of Sami Pharma and others versus SRB, CP-D No. 5220/2017, relevant para is reproduced as under:-

> *"9.....but it needs to be appreciated that such authority to impose tax is only on services and not on goods or otherwise (Emphasis supplied). It is only the quantum of service rendered or supplied which can be taxed by Province. By no stretch of imagination either by rules or otherwise, it can be extended to any other goods or amount which is not falling within services (Emphasis supplied).*

34. The contention of the learned advocate for the respondent that the cost of the goods was part of services in determining the value of services has no force. It is provided in Section 5 of the Act that value of a taxable service is the consideration in money including all Federal and Provincial duties and taxes, if any, which the person providing a service receives from the recipient of the service but excluding the amount of SST tax under this Act. It was further provided that in case the consideration for a service is in kind or is partly in kind and partly in money, the value of the service shall mean the open market price of the service as determined under section 6 of the Act. However, even this provision does not provide for adding the cost of goods in determining the value of taxable services.

35. The most important provision is enumerated in section 8 of the Act which provides for scope of tax. This provision provides that subject to the provisions of this Act, there shall be charged, levied and collected a tax known as sales tax on the value of a taxable service at the rate specified in the Schedule in which the taxable service is listed. Subsection (2) of section 8 of the Act then provides the authority to the Board or the Government for fixing a higher or lower rate of tax as may be specified through Notification. This provision also does not provide for taxing the goods if used in providing taxable services.

36. The charging section is a most important provision and has to be construed strictly and does not provide for inclusion of the cost of goods if the same is used in providing taxable services. Regarding pith and

substance the Supreme Court in the reported case of SRB V CAA as quoted supra has held as under:-

> *"37.....The pith and substance of the legislated subject is to be examined to determine in whose legislative sphere a particular subject comes under. And above all a reasonable interpretation which does not produce impracticable results should be adopted".*

The pith and substance of the matter is that if there are two taxing powers both cannot exercise their powers simultaneously, and each has to act in their respective jurisdiction. Thus demanding SST on the cost of goods by SRB is not legally justifiable.

37. In view of the above discussions we are of the view that SRB is not entitled to demand tax on the component of goods or supplies even if these are part of taxable service, consequently both these appeals are allowed and both OIO and OIA are setaside. The case is remanded to the learned AO/AC for passing fresh order after making proper inquiries regarding providing or rendering of services and separating the sale of devices from levy of SST. The SST is payable only on vehicle tracking services/monitoring services for the tax periods from July, 2011 to June, 2015. The SST is payable on all services which includes vehicle tracking services/monitoring services, rental/hire of equipment/device, and other services for the tax periods from July, 2015 onwards. The AO/AC should provide proper right of hearing to the appellant before passing the fresh order.

38. For the above reasons both appeals are disposed of. The copy of the order may be provided to the authorized representatives of the parties.

(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER

(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Certified to be True Copy

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Karachi
Dated: 25.01.2021

Order Dispatched on 27/02/2021

Order issued on 27/02/2021

Registrar

Registrar

Copy for compliance:

1. The appellant through authorized Representative.
2. The advocate for the respondent.
3. Assistant Commissioner (Unit-), SRB, Karachi.

Copy for information to:-

4. The Commissioner (Appeals), SRB, Karachi.
5. Office Copy.
6. Guard File.