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**BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI**

**DB-I**

**APPEAL NO. AT- 96 /2018**

M/s Ghulam Hussain & Bros.....Appellant

**Versus**

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

Ms. Motia Badruddin, ACA and Mr. Uzair Memon, ACA and for Appellant.

None present for respondent.

Date of Filing Appeal: 23.10.2018

Date of hearing: 07.01.2019

Date of Order: 08.01.2019

**ORDER**

**Justice<sup>®</sup> Nadeem Azhar Siddiqi:** By this order we intend to decide this appeal in the line of other appeals decided by us vide our earlier Order Dated 22.11.2018 in Appeal No. AT- 61/18 and others.

01 This appeal has been filed by the appellant challenging the Order-in-Appeal No.197/2018 dated 05.10.2018 passed by the Commissioner (Appeals) in Appeal No. 129/2017 filed by the Appellant against the Order-in-Original No. 88/2017 dated 11.08.2017 passed by the Deputy Commissioner (Mr. Syed Rizwan Ali) SRB, Karachi.



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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/manufacture including Colgate-Palm Olive (Pakistan) Limited (hereinafter referred to as Palm Olive) in Sindh falling under Tariff Heading 9845.0000 (Supply chain management or distribution (including delivery) services of the 2<sup>nd</sup> 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.

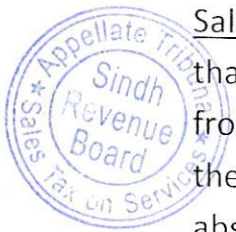


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07. The Officer after hearing passed Order of Compulsory Registration of the appellant under section 24B of the Act for the service falling under Tariff Heading 9845.0000 (Supply chain management or distribution (including delivery) services of the 2<sup>nd</sup> 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. Ms. Motia Badruddin the learned Representative of the appellant filed Summary of Arguments. She submitted that Entry No. 49 of the Federal Legislative List deals with sales tax on goods and services and by an exception sales tax on services was excluded and the taxing authority to tax services vest in the provinces. She then submitted that there cannot be two taxes on the same transaction; one levied by the Federation treating the same as sale of goods and other by province treating it as a service. She 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). She 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 ownership and risk & reward is transferred the sale becomes absolute. She further submitted that sale is established from the fact that Palm Olive sold goods to appellant who sold goods to wholesaler, dealer, retailer and etc. Both the appellant and Palm Olive are registered under Sales Tax Act, 1990 and have charged sales tax on goods. She then submitted that the appellant is not the agent of Palm Olive and the profits of appellant are not shared with Palm Olive. She also submitted that once the goods sold become the property of buyer (appellant) and to protect and safe guard such goods is the responsibility of the buyer



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and in case of any loss to the goods the seller (Palm Olive) will not be responsible to compensate the buyer. She 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. In earlier Appeal No. 61/2018 and others Mr. Syed Rizwan Ali, the learned DC appeared and submitted as under:

*"11. 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 Palm Olive is of Principal and Distributor and on the basis of agreement the appointment was made exclusively as distributor.*

*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 deliver) 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 2<sup>nd</sup> Schedule to the Act which provides that "distribution" (including delivery) is a*



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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.

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.

11. Ms. Motia Badruddin the learned Representative of the appellant argued that there cannot not be two taxes on the same transaction one levied by the Federation treating the same as sale of goods and other by province treating it as a service. The contention has no force. Sale of goods and providing or rendering services in relation to goods are two separate transactions. Sub-section (79) of section 2 of the Act provides that "service means anything which is not goods and shall include but not limited to the services listed in the First Schedule of the Act". The two explanations attached to the above quoted section provide that "[Explanation-I] service will remain and continue to be treated as service regardless whether or not 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". [Explanation 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. The explanations made it clear that the service or services involved in the supply of goods shall remain and continue to be treated as service or services. The appellant under an Agreement of Distribution supply goods to whole seller, dealers and retailers and this activity is covered by Tariff Heading 9845.0000 (Supply Chain Management or distribution (including delivery) services of the Second schedule of the Act. Section 3 of the Act also provides that a taxable service is a service listed in the Second Schedule of the Act.

In the case reported as PLD 2011 Lahore 402 the Lahore High Court has held that "in absence of clear provisions stipulating double or multiple levies, the court must lean in favour of avoiding double taxation. There can be double



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taxation if the legislature has distinctly and expressly enacted it, however in the absence of such enactment the court has to interpret the provisions in the manner where they cannot so interpreted as to tax the subject twice over to same". Here two distinct legislatures have distinctly levied two types of tax, one on sale of goods and the other is on providing or rendering services and it cannot be said that two tax has been levied on one and same transaction.

12. In the earlier appeals of similar nature relating to the compulsory registration of Distributers under section 24 of the Act we have held as under:

*"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 18<sup>th</sup> 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.*

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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 adds 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 deliver) services" of the Second Schedule to the Act-2011, I am oblige 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".



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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 meaning 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 distribution of goods by appellant is a service under the Act of 2011 and the Commissioner (Appeals) has rightly treated it as service.

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.




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14. The findings recorded in the earlier appeals are fully applicable in this appeal also and we do not find any reason to deviate from the same.

15. In view of the above discussion the appeal is dismissed. The copies of the order may be provided to the learned authorized representative of the parties.

  
(Agha Kafeel Barik)  
TECHNICAL MEMBER

  
(Justice<sup>®</sup> Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi

Dated: 08.01.2019

Certified to be True Copy

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

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.