

(Quard file)

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

DB-I

APPEAL NO. AT- 64 /2019

M/s Socio Engineering Consultants.....Appellant

Versus

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

Date of filing of Appeal: 05.07.2019

Date of hearing: 29.11.2019

Date of Order: 23.12.2019

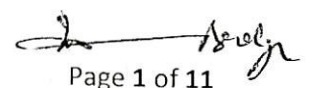
Mr. Ashfaq Ahmad, Advocate for appellant along with Mr. Mustafa Lakhani, Finance Manager of appellant.

Ms. Uzma Ghory, AC-DR and Mr. Muhammad Asad Raza, AC and Ms. Lubna Najmi, Ac for Respondent.

ORDER

Justice © Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.95/2019 dated 06.05.2019 passed by the Commissioner (Appeals) in Appeals No. 294/2016 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 814/2016





dated 21.10.2016 passed by the Assistant Commissioner (Ms. Nida Noor), SRB, Karachi.

02. In short the facts of the case as stated in the OIO are that appellant got registration under principal activity of "Management Consultants", Tariff Heading 9815.4000 and other activity of "Software or IT based System Development Consultants, Tariff Heading 9815.6000 of Second Schedule to the Sindh Sales Tax on Services Act, 2011 (herein after referred to as the Act) chargeable to Sindh Sales Tax (SST) at the rate specified in the Second Schedule to the Act with effect from July 1st, 2013.

03. The allegations against the appellant in the OIO are that the appellant had provided services amounting to Rs.134,455,265/= to Board of Revenue (BOR), Government of Sindh for the tax periods from July, 2013 to but no (SST) was deposited against the said services. It was alleged that the appellant vide letter dated 02.05.2016 was required to deposit the unpaid amount of SST on the said services. The appellant was also required to submit sales tax returns and the copy of agreement signed with BOR with copy of Income Tax return. It was also alleged that the appellant had not responded to the above said letter, hence a reminder was issued on 11.05.2016 in response to which the appellant requested for time vide its letter dated 17.05.2016 which was granted till 04.06.2016 but the appellant neither submitted requisite documents nor deposited the due amount of SST.

04. The appellant was served with a show-cause notice (SCN) dated 07.06.2016 to explain as to why SST amounting to Rs.21,512,842/= may not be assessed and recovered under section 23 read with section 47 (1A) (a) of the Act. Moreover default surcharge under section 44 of the Act and penalties under clause No. 2, 3, 6 and 15 of section 43 of the Act may not be imposed.

05. The appellant filed written reply dated 14.06.2016 and submitted that the agreement with BOR was signed in the year 2012 and at that time the services of management consultant were not included in the Second



Schedule to the Act. The appellant vide letter dated 20.06.2016 submitted that the BOR had deducted amount of SST on services which were applicable from 01.07.2013. The appellant vide letter dated 27.07.2016 again submitted that BOR was required to make payment of SST in addition to the value of contract and that the appellant was a non-resident person till its registration with SRB in the year 2015.

06. The Assessing Officer (AO) passed the OIO determining the SST of Rs.20,721,699/= for the tax periods from July, 2013 to June, 2015 under section 23 read with section 47 (IA) (a) of the Act together with default surcharge and penalty of Rs.1,036,084/= under clause 3 of the Table of section 43 and Rs.20,721,699/= under clause 6 (c) of the Table of section 43 of the Act (although in the SCN no specific sub-clause of clause 6 was confronted).

07. The Appellant challenged the OIO by way of filing appeal before the Commissioner (Appeals) who dismissed the appeal for non-prosecution and upheld the OIO.

08. The appellant being dissatisfied has now challenged the said OIA before this Tribunal. Mr. Ashfaq Ahmad the learned advocate for the appellant submitted as under:-

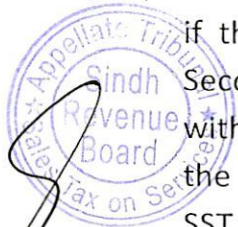
(I) The office of the appellant is situated at Islamabad and the agreement was entered with Government of Sindh on 11.12.22012 regarding Data Entry Services of LARMIS. At that time the service was not part of Second Schedule to the Act.

(II) The appellant got voluntary registration on 03.04.2015 for the principal activity of "Management Consultant" Tariff Heading 9815.4000 (9819.9300). However, since the service was not taxable thus the Government of Sindh had not deducted any tax from the payment of appellant through Accountant General, Sindh.

(III) At the time of issuance of SCN the department was not sure about the nature of services provided or rendered by the appellant as SCN was issued invoking Tariff Heading 9815.4000 (Management Consultants) and 9815.6000 (Software or IT based system development Consultants), but the order was passed under Tariff Heading 9815.4000, "Management Consultants".



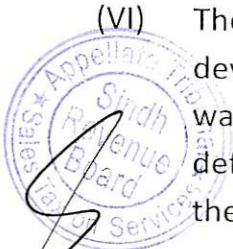
- (IV) The appellant had not provided any service of Management Consultants to BOR, Government of Sindh but instead it had provided Data Entry Service under a contract dated 11.12.2012 Appendix "A" to the contract provides nature of service to be provided to BOR. He further submitted that at the relevant time when contract was entered on 11.12.2012 the appellant was not registered with SRB and was non-resident having office at Islamabad only. It had neither charged tax on invoices nor received any tax from Government of Sindh.
- (V) The BOR was withholding entire amount of SST and paying the same to SRB since the services were acquired from a non-resident as well as non-registered person. Moreover the BOR had not deducted or withheld any amount of SST for the reason that the services acquired by them were not covered under any Tariff Heading of the Second Schedule to the Act and referred to sub-rule (4) of rule 3 of Sindh Sales Tax Special Procedure (Withholding) Rules, 2011 and 2014 (hereinafter referred to as withholding rules).
- (VI) The services provided by the appellant viz., "Data processing and provision of information, service of Engineers, handling and storage of goods" is part of First Schedule (entry under Tariff Heading 9824.0000) to the Act. It is not part of Second Schedule to the Act and is thus not taxable services as per section 3 and 8 of the Act read with the Second Schedule to the Act
- (VII) The job of "Data Entry" was part of "Data Processing" and the appellant relied upon the dictionary meaning of "Data Processing". This fact is evident from clauses of Appendix "A" to the Agreement and the Completion Certificate which clearly shows that the job assigned was that of Data Entry.
- (VIII) The clause pertaining to inclusion of tax in the price was effective only if the service provided by the appellant to BOR was taxable under Second Schedule to the Act. However, the invoices issued to BOR were without charging SST. Moreover even if the service was taxable it was the responsibility of the withholding Agent/BOR to withhold/ collect SST from the amount of invoice and to pay/deposit the same with SRB.
- (IX) In case a service recipient acquired services from a non-registered person the responsibility to withhold and pay tax was upon the service recipient as provided under sub-rule (4) of Rule 3 of withholding rules.



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09. Ms. Uzma Ghori AC-DR, SRB and Mr. Muhammad Asad Raza, AC-SRB for respondent submitted as under:-

- (I) The SCN was issued on the basis of information received from Board of Revenue (BOR) and it was evident from the Agreement dated 11.12.2012 that the appellant had its office at Karachi at the time of entering into said agreement with BOR.
- (II) The price was mentioned in clause 1.8 of the agreement which was inclusive of indirect taxes and the appellant being resident was liable to pay the same.
- (III) The appellant got voluntarily registration on 01.01.2015 under Tariff Heading 9819.9300 (Management Consultant). The tax periods involved as mentioned in the Show Cause Notice dated 07.06.2016 were from July, 2013 to June, 2015. However, since the price was inclusive of SST as soon as the payment was made by BOR to appellant the tax was passed on to the appellant who was liable to pay the same to SRB.
- (IV) The appellant had received proportionate payment from BOR for the tax periods from July, 2013 to June, 2015 and was liable to deposit/pay the SST to SRB on receiving such part payment.
- (V) The work assigned to the appellant was completed after it's voluntarily registration with SRB. The invoices were issued prior and after the registration of the appellant and for argument sake if the contention of the appellant that it was not liable to pay tax prior to the date of registration was taken to be correct then it was also liable to pay tax on the payment received after registration as referred to Section 17(2) (iii) of the Act.
- (VI) The job of the appellant was to convert manual data into already developed software by "LARMIS" by entering data into the computer. It was submitted that the service of "Data Entry" was covered under the definition of Management Consultant as referred in section 2 (57) of the Act. Moreover the job assigned to the appellant was directly covered under phrase "modification, rectification, or up gradation" of any working system of such business, organization or institution.
- (VII) The job assigned to the appellant was not a simple job of data entry but was coupled with other jobs covered under the definition of Management Consultants which were referred to in clauses XIV and XVI to Appendix "A" of the agreement.



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10. The relevant clauses of the Agreement entered into by the appellant and the BOR were discussed to ascertain the actual nature of service provided or rendered by the appellant. The relevant clauses of the agreement dated 11.12.2012 provides as under:-

"(1) The Client, with the approval of the Government, invited bids for the procurement services for Data Entry of Land Record serving its various functional areas as specified in Appendix A".

(2) The Contractor, in response to the invitation for bids, submitted its bid for the provision of Data Entry Services for LARMIS.

(3) The Contractor has agreed to provide the Purchaser services of LARMIS, as specified in Appendix A, and deliver the documentation on optical media and hard copies.

11. The relevant provisions of General Conditions of Contract are reproduced as under:-

"1.1 (f) Contract Price means the price to be paid for the performance of the Services, in accordance with Clause 5 (GC).

1.8. Taxes and Duties. The contractor shall pay all such indirect taxes, duties, fees, and other impositions levied under the Applicable Law, as specified in the SG, the amount of which is deemed to have been included in the Contract Price".

12. The relevant portions of APPENDIX A-DESCRIPTION OF SERVICES are reproduced as under:-

"1. Under the proposed project of LARMIS, there will be a centralized Database at Karachi along with Disaster Recovery Centre distantly and appropriately located. There will be 27 facilitation centers, one each district headquarters of province. These facilitation centers will be connected with the main database center at Provincial headquarter and revenue related information of any district, whether rural or urban records, can be obtained from each convenience center.

Tasks Details:

(i) The scanned pages of land records will be used by data entry operators for entering in the data in database and therefore should provide adequate legibility of the text contained therein so the



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operators can perform their task efficiently and speedily without any hindrance

(iii) Data entry will be done in Sindhi/Urdu/English through the Application Software provided by Board of Revenue.

(iv) Data entry will be done in service provider's own data site.

We have heard the learned representatives of the parties and perused the record made available before us.

13. The controversy as per respondent was that while providing "Data Entry Service" to BOR the appellant had actually provided service covered by the definition of "Management Consultants", Tariff Heading 9815.4000. However, while issuing the SCN the department was not sure about the actual nature of service provided or rendered by the appellant to BOR as the SCN was issued invoking two Tariff Headings (a) "Management Consultants", Tariff Heading 9815.4000 and (b) "Software or IT based System Development Consultants, Tariff Heading 9815.6000 of Second Schedule to the Act. It is pertinent to point out that at the time of issuance of SCN no details relating to agreement between the appellant and BOR was available with the department, and the appellant was required in SCN to provide the copy of Income Tax Return and copy of Agreement with BOR. It appears that SCN was issued by the AO without any material or details and was simply a roving and fishing expedition which is not permissible and has been deprecated by Superior Courts.

14. In the reported judgment of Assistant Director Intelligence & Investigation, Customs, Karachi versus B. R. Herman, PLD 1992 SC it was held that "the authority cannot make a roving inquiry or issue a notice by merely shooting in dark in the hope that it will be able to find out some material out of the same". In another reported judgment of Caretex versus Collector, Sales Tax, 2013 PTD 1536 it was held that "show cause notice" was not a casual correspondence or a tool or license to commence roving inquiry into the affairs of the tax payer based on assumption and speculations but was a fundamental



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document that carried definitive legal and factual position of the department against the tax payer”.

15. The tax was levied invoking Tariff Heading 9815.4000 “Management Consultant”. Moreover Sub section (57) of section 2 of the Act provides as under:-

“(57) Management Consultant means a person engaged, either directly or indirectly, in providing of services in connection with the management of any business, organization, or institution in any manner and includes a person who renders advice, consultancy or technical assistance relating to conceptualizing, devising, development, modification rectification or upgradation of any working system of such business, organization or institution”.

16. From the perusal of the above definition of “Management Consultant” it appears that the same comprises of two parts. The first part provides that a Management Consultant is a person who is engaged in providing service in connection with the management of any business, organization or institution. Whereas The second part provides that a Management Consultant is a person engaged in providing service in relation to advice, consultancy or technical assistance relating to conceptualizing, devising, development, modification rectification or upgradation of any working system of such business, organization or institution. From the definition it appears that a Management Consultant is a person that gives professional advice for managing business, organization or institution more effectively and appropriately it also helps to improve the purpose and to solve problems and finding new and better ways of doing things. The services in the instant case were provided to BOR a department of Government of Sindh, which is not engaged in any kind of business and its job is to maintain the land record of the Province of Sindh.

17. The perusal of the relevant clauses of the Agreement as mentioned at para 10 to 13 supra clearly reflect that the job of providing advice or consultancy was missing or lacking from the work/job assigned to the appellant. Without any specific condition in the agreement in this regard



it cannot be said that appellant had provided the services of Management Consultant. From the perusal of agreement it is established that the job/work performed by the appellant was that of data entry on already developed software LARMIS.

18. The settled law is that while interpreting taxing statute the authorities must look to the words of the statute and should interpret the same in the light of what is clearly expressed. The authorities cannot import provisions in the statute so as to support assumed deficiency and in interpreting fiscal laws there is no room for any intendment and there is also no presumption as to tax. It is also settled law that tax could only be levied under a provision of law, which is unambiguous and clear.

19. The general rule of interpretation is that words used in a statute must first be given their ordinary and natural meaning. It is only when such an ordinary meaning does not make sense then resort can be made to discovering other appropriate meaning. In the reported case of Government of Pakistan versus M/s Hashwani Hotels Limited, PLD 1990 Supreme Court 68 it has been held as under:-

"Before examining the wording of clause (a) of section 4 (3) of the Act to which reference shall be made later on, it is essential to advert to the accepted principles for the construction of statutes with special reference to the Taxing Statutes.

The first and the foremost principle of interpretation is that words are to be taken in their literal meaning. The plain ordinary meaning of the word is to be adopted in construing a document. There have to be special circumstances where this principle is to be deviated and certain words have to be interpreted differently than their plain meanings with reference to the context.

In the case of Pakistan Textile Mill Owners Association Karachi v/s Administrator of Karachi PLD 1963 Supreme Court 137, it was observed that in a taxing statute, as in any other statutes, there is no reason to depart from the general rule that words used in a statute must first be given their ordinary and natural meaning. It is only when such ordinary meaning does not make sense that resort can be made to discovering other appropriate meanings."



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20. It is a well-recognized principle of interpretation of statutes that a fiscal enactment should be construed strictly as it is and whenever there is an ambiguity the benefit of doubt should be given to the taxpayer. Again if two equally reasonable constructions are possible then construction favorable to taxpayer should be preferred.

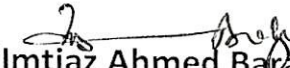
21. The learned advocate for the appellant has rightly pointed out from the First Schedule to the Act that "Data Processing" and provision of information, service of Engineers, handling and storage of goods is part of First Schedule to the Act and was not part of the Second Schedule. He also rightly pointed out that "Data Entry" is part of Data Processing and does not fall in the category of Management Consultant. "Data Processing" means manipulation of data by computer and conversion of raw data into machine-readable form. "Data Entry" means to operate equipment to input alphabetic, numeric or symbolic data into a system which may come from hand-written form or otherwise. It is a process of inputting data or information into computer using key board, scanner and disc or to input data into system/computer from non-electronic files.

22. The submissions of the learned AC that the service of "Data Entry" was covered under the definition of Management Consultant and that the job assigned to the appellant was directly covered under phrase "modification, rectification, or up gradation" of any working system of such business, organization or institution are untenable. We are unable to agree that work/job assigned to the appellant was covered under the definition of "Management Consultant".

23. In view of the above discussions we are of the opinion that the job assigned to the appellant was not of "Management Consultant" but of "Data Entry" or "Data Processing" which was not part of Second Schedule to the Act and was not taxable for the relevant tax periods i.e. from July, 2013 to June, 2015, consequently both the OIO and OIA are annulled.



24. The appeal is allowed in the above terms. Copy of this order may be provided to the learned representatives of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi. Dated: 23.12.2019

Copies supplied for compliance:-

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

Copy for information to:-

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

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

31/12/19

Registrar

Order Dispatched on

31/12/19

Registrar