

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-1

APPEAL NO. AT-06/2020

M/s Pakistan American Culture Centre

Hyderabad

Appellant

Versus

Commissioner (Appeals-I), SRB, Karachi

Respondent

Date of Filing of Appeal: 28.02.2020

11.08.2020

Date of Hearing: 11.08.2020

17.08.2020

Date of Order: 17.08.2020

17.08.2020

Mr. Najeeb Mochala, FCA for Appellant

Ms. Narmeen Qureshi, AC-SRB, Hyderabad for Respondent

ORDER

Justice © Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal (OIA) No.02/2020 dated 16.01.2020 passed by the Commissioner (Appeals-II) in Appeal No. 370/2019 filed by the appellant against the Order-in-Original (OIO) No. 670/2019 dated 19.09.2019 passed by the Assistant Commissioner (Mr.Nasir Bachani) SRB, Karachi.

The facts as stated in the order-in-original are that the with the enactment of Sindh Finance Act, 2019, "Training services" (Tariff Heading 9848.0000) of the Schedule attached to Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) are declared taxable in Sindh from 1st July, 2019, subject to levy of Sindh Sales Tax (SST) at the rate of 5% in accordance with the Notification vide No. SRB3-4/21/2019 dated 01-07-2019. The said services are defined in sub-section (98AA) of section 2 of the Act.

03. It was alleged in the OIO that the appellant was served with a notice dated 12.07.2019 followed by a reminder dated 06.09.2013 for registration with SRB under Chapter-IV, section 24 of the Act read with Chapter-II of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules)



18/08/20

by July 19, 2019 and non-compliance of the law or any delay in this respect would entail prosecution under the Act.

04. It was further alleged in the OIO that hearing was fixed on 19.07.2019 and it was confronted that in case of non-compliance the proceedings will be completed *ex parte* and appellant would be compulsorily registered. Furthermore penalty prescribed under Serial No. 1 of the Table under section 43 of the Act would be levied on account of violation of section 24 of the Act. The appellant filed Reply on 17.09.2019 and contended that it was providing education services which were excluded from the definition of training services. The Assessing Officer (AO) passed order of compulsorily registration of the appellant and imposed penalty of Rs.100,000/=.

05. The Appellant challenged the OIO by way of filing appeal before the Commissioner (Appeals) who dismissed the appeal for non-prosecution. Hence the appellant filed this appeal.

06. Mr. Najeeb Mochala, representative for appellant submitted as under:-

(i) The appellant is not providing any type of training but is imparting education which as a whole is out of the ambit of the Act. He produced a photocopy of clarification issued by SRI that the education was not taxable.

The appellant was not providing any training but educating the students in English language and the activity of the appellant fell in providing education.

The SST was levied on the English language courses which are part of education offered by appellant on no profit no loss basis. Moreover imparting education was not a service under Tariff Heading 9848.0000 (Training Services).

(iii) The language courses are purely academic in nature and treating it as training was against the intent of law. The English Language course offered by appellant is also not covered under the definition of "Training Services" provided in sub section (98AA) of Section 2 of the Act.



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(iv) He referred to the dictionary meaning of word "Training" provided in the Black's Law Dictionary and submitted that the training refers to developing skills rather than education and the purpose of training has specific goals of improving ones capability, capacity, productivity and performance.

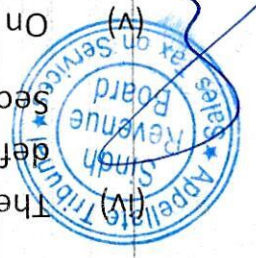
07. Ms. Narmeen Qureshi, AC for SRB submitted as under:-
(i) The sub-section (98AA) of section 2 of the Act and Tariff Heading 9846.000 were added by Sindh Finance Act, 2019 effective from 05.07.2019.

(ii) The appellant is not a non-profit organization and in the year ended June, 2017 earned profit of Rs.45.5 million which was increased to Rs.55.9 million in the year ended June, 2018.

(iii) The appellant are also engaged in providing other skill enhancement programs, which were reflected on the website of the appellant, including fashion designing, sketching, photography, yoga, computer hardware, graphic, web designing, text crafting, digital media and etc. and referred to the website (www.pacc.edu.pk) of the appellant, and produced down loaded material.

(v) The service activities of the appellant clearly fall under the definition of training services defined in sub section (98AA) of Section 2 of the Act and Tariff Heading 9848.0000.
On failure of the appellant to apply for registration the Department had rightly compulsory registered the appellant under section 24B of the Act.

(vi) The appellant provides various types of services which enhance the skills of a person which fall under the definition of training. She referred to the definition of training provided in sub section (98AA) and submitted that the definition is very exclusive and includes the language courses offered, provided or rendered for imparting skills or knowledge or lesson and also includes



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2/8

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vocational, professional, technical, commercial or specialized trainings.

08. In rebuttal Mr. Najeeb Mochala, submitted that it is not the intent of law maker to include education in the ambit of tax. He then submitted that Note 14.1 of the audited accounts for the year ending June, 30, 2018 clearly reflected that the revenue was from English language programme only and not from other programs. He then submitted that SCN was issued only on the basis of revenue shown in the financial statements without proper particulars and the details of taxable services of training.

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

10. The contention of the appellant is that it was providing education and not training and the education is not covered by the definition provided in sub-section (98AA) of section 2 of the Act and Tariff Heading 9848.0000. Whereas the contention of the respondent was that the appellant is providing training services and thus was rightly compulsorily registered.

11. The SCN was issued on 12.07.2019 without specifying the nature of training services provided or rendered by the appellant. The appellant through the SCN was asked to get itself registered, but it was not stated therein that the appellant was providing taxable training services. However in the OIO it was mentioned that the appellant had engaged in providing or rendering taxable services of training, but it was not mentioned what type or kind of training services were provided or rendered by the appellant.

12. The SCN was bad for want of proper particulars. The authority issuing SCN will have to make out a case in the SCN itself. The SCN is not a casual/formal correspondence. Its purpose is to put the person/party on notice about the allegation against it so that the person/party may take appropriate defence. The SCN carrying defect of vagueness could not stand the test of judicial scrutiny. Apparently the SCN was issued without any material available before the AO and for that reason no particulars of services were mentioned in the SCN. The authority to issue SCN is not a license to commence roving and fishing enquiry based on assumptions and speculations. This view ^{is} supported from the following decisions of the superior courts:-

Page 8/14



(i) In the reported case of Collector Central Excise and Land Customs versus Rahm Din **1987 SCMR 1840** it has been held that "order of adjudication being ultimately based on a ground which was not mentioned in the SCN, was palpably illegal on face of it.

(ii) In the reported case of Assistant Director Intelligence & Investigation, Customs, Karachi versus B. R. Herman, **PLD 1992 SC 485** (Assistant Director, Intelligence and Investigation, Customs, Karachi versus B. R. Herman 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".

(iii) In another reported judgment of Caretex versus Collector, Sales Tax, **2013 PTD 1536 (Caretex versus Collector Sales Tax)** 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 document that carried definitive legal and factual position of the department against the tax payer".

13. The OIO was passed on the ground that the appellant had provided training services but such allegation was missing from the SCN. An OIO could not be passed on a ground not taken or mentioned in the SCN. Since the SCN was defective for want of proper particulars hence no superstructure could be built on such notice and OIO and OIA cannot be maintained.

14. It is not disputed that appellant offered and provided English Language Courses. The question is that English language courses are part of training or education. The allegation against the appellant is that it had provided training services. The same was defined in sub-section (98AA) of section 2 of the Act as under:-

"means the training services or rendered by any person, institute or establishment, by whatever name called, for imparting skill or knowledge or lesson on any subject or field, with or without issuance of a certificate, and includes the service of vocational, professional, technical, commercial or specialized trainings, courses, seminars, workshops and lectures imparted for consideration but does not include the services of coaching or training of sports;"

Ref 8/5



15. This provision has two parts. The first part starts from the word "means" and ended on the word "certificate". The second part starts from the words "and includes" and ended on the word "sports". First part deals with imparting skill or knowledge or lesson on any subject or field. In the second part the legislature had enlarged the meaning of the word training by using the word includes. The second part deals with the vocational, professional, technical, commercial or specialized trainings, courses, seminars, workshops and lectures and does not include language course. From plain reading of the above provision it is clear that the English language courses offered by the appellant were neither covered in the first portion nor second portion of the definition clause.

16. The word "training" has been defined in the Oxford Advanced Learner's Dictionary "the process of learning the skill that you need to do a job: staff training, a training course". The same word was defined by Google as "the action of teaching a person or animal a particular skill or type of behaviour".

17. 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 meaning with reference to the context. In Pakistan Textile Mill Owners Association Karachi v. Administrator of Karachi PLD 1963 Supreme Court 137, it was held as under:-

"In a taxing statute, as in any other statute, 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 an ordinary meaning does not make sense that resort can be made to discovering other appropriate meanings."

18. The word "training" has been defined in the Act itself and in view of the above referred judgment there is no need to consider the dictionary meaning of the word "training". In Messrs Hirjina and Co. (Pakistan) Ltd., Karachi v. Commissioner of Sales Tax Central, Karachi 1971 SCMR 128, it was observed held as under:-

"We may here observe that interpreting the taxing statute the Courts must look to the words of the statute and interpret it in the light of what is clearly

8/8/9

8



expressed. It cannot import provisions in the statute so as to support assumed deficiency."

19. The other aspect of the case is that service sought to be taxed could only be taxed when it comes within the scope of law. In the reported case of A & B Food Industries Ltd. versus Commissioner Income Tax/Sales Tax, Karachi, 1992 SCMR 663 it was held as under:-

"The Commissioner of Agricultural Income-Tax, East Bengal v. B.W.M. Abdur Rahman, Manager, Taki Bara Taraf Wards Estate (1973 S.M.R. 445), wherein Cornelius, J. (as his Lordship then was) made the following observations:-

But indeed, in determining whether or not a particular matter comes within taxing statutes, it is only the letter of the law which must be looked to. There is ample authority for the proposition being that if the person sought to be taxed comes within the letter of law, he must be taxed, however great a hardship may thereby be involved but on the other hand if the Crown cannot bring the subject within the letter of the law he is free, however apparent it may be that his case is within what might be called the spirit of the law. As was said by Rowlat, J., in *Cap Brandy Syndicate v. Inland Revenue Commissioner* ((1921) 1 K.B. 65):

In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

The case relates to compulsory registration of the appellant under section 24B of the Act read with Tariff Heading 9848.0000 (training services) of the Second Schedule to the Act. Section 24 of the Act provides that registration will be required for all persons who are resident and provide services listed in the second schedule from their registered office or place of business in Sindh. Section 24B provides that if a person is required to be registered under the Act, shall, after such enquiry as he may deemed fit and after notice, register the person through an order to be issued in writing and such person shall be deemed to have been registered from the date he became liable to registration.



81

7/8

21. The appellant is a resident person and is registered with FBR and was operating in Sindh. The activity of the appellant was to provide education (English language course). The appellant's economic activity involved the provision of providing education, not listed in the Second Schedule to the Act and not training services and thus the appellant was not required to be registered.

22. The AO for passing the OIO only considered the audited accounts. Note 14 of the Accounts provided for English Language Program and Note 14.1 provided for Revenue. From this it is apparent that all revenue were earned from English Language Program and not from other types of training offered by the appellant on its web side.

23. In view of the above we are satisfied that the offering or imparting English Language Course does not come within the ambit of training as provided in sub-section (98AA) of section 2 of the Act read with Tariff Heading 9848.0000 (training services). Both the OIO and OIA are set aside and annulled. However if material and evidence is available with the department that appellant is providing training as mentioned in its web-site the department is at liberty to issue fresh notice to the appellant.

24. The copy of order may be provided to the learned representatives of the parties.

Imtiaz Ahmed Barakzai
Member Technical

Karachi, Dated: 17.08.2020

Copy for compliance:

01. The appellant through authorized Representative.

02. The Commissioner (Appeals), SRB, Karachi

Copy for information to:-

03. The Assistant Commissioner (Unit-), SRB, Karachi.

04. Office Copy.

05. Guard File

Order Dispatched on

8/8

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Justice (R) Nadeem Azhar Siddiqi
Chairman

Registrar

Registrar