

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-28/2020

M/s Fidelity Insurance Brokers (Pvt.) Limited
Office No. 1503, 15th Floor, Emerald Tower,
G-19, Block-5, Main Clifton Road,
Karachi..... Appellant

Versus

Assistant Commissioner, Unit No.10,
Sindh Revenue Board,
Shaheen Complex,
M.R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal 20.09.2021
Date of hearing 17.09.2021
Date of Order 17.11.2021

Mr. Abdul Rehman, advocate and Mr. Ehtasham Qadir, advocate for appellant.

Ms. Sania Anwar Sheikh AC, and Mr. Nasir Bachani AC-DR SRB, 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. 60/2020 dated 30.06.2020 passed by the Commissioner (Appeals) in Appeal No. 371/2019 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 680/2019 dated 26.09.2019 passed by the Mr. Yousuf Ali Magsi, Assistant Commissioner, (Unit-10) SRB Karachi.

Magsi
[Signature]

02. The brief facts as stated in the OIO were that the appellant provided or rendered services in respect of insurance agents or brokers under Tariff Heading 9855.0000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) read with definition prescribed under sub-section (53A) of section 2 of the Act and was brought to tax net vide Sindh Finance Act, 2019 and was chargeable to Sindh Sales Tax (SST) at the reduced rate of 5% vide notification No.SRB-3-4/21/2019 dated 01.07.2019. The relevant rule was rule 31A of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules).

03. It was further stated that as per section 24 of the Act read with rule 31A of the Rules every insurance agent or broker was required to get registration from Sindh revenue Board (SRB).

04. It was alleged that the appellant bearing NTN: 3550251-7 was engaged in providing or rendering above taxable services. The appellant was served with letter dated 24.07.2019 and in response Mr. Imran Muhammad, Chief Financial Officer appeared and requested for 15 days time to make necessary compliance. However, no compliance was made on due date nor the company got registration with SRB which was in contravention of the provisions of section 24 of the Act and the rules made thereunder.

05. It was further alleged in the OIO that providing or rendering taxable services without getting registration tantamounted to tax fraud under sub-section (94) of section 2 of the Act and same was liable to penalties prescribed under serial No. 1 and No.8 of the Table under section 43 of the Act.

06. The appellant was served with a Show-Cause Notice (SCN) dated 19.08.2019 under sub-section (2) of section 24B of the Act calling upon it to explain as to why it should not be compulsory registered. The appellant was also called upon to explain as to why penalties under Serial No. 1 and 8 of the Table under section 43 of the Act should not be imposed.

07. In response to the SCN Mr. Imran Muhammad, CFO appeared for hearing on 25.09.2019 and filed a letter dated September, 2019 wherein he submitted that Pakistan Insurance Brokers Association (PIBA) had filed Constitutional Petition bearing C.P. No. D-6130 of 2019 on 25th September, 2019 before the High

Court of Sindh and requested for adjournment. However statedly no reply to SCN was filed by the appellant.

08. The Assessing Officer (AO) passed OIO ordering the Compulsory Registration of the appellant under section 24B of the Act read with rule 31A of the Rules. The AO also imposed penalty of Rs.100,000/= under Serial No. 1 of the Table under section 43 of the Act.

09. The appellant being aggrieved with the impugned OIO, filed Appeal under section 57 of the Act on 16.10.2019 which was decided by Commissioner (Appeals) vide OIA dated 30.06.2020 upholding the compulsorily registration of the appellant. However the Commissioner (Appeals) reduced the penalty from Rs.100,000/= to Rs.50,000/=. The appellant being dissatisfied with the OIA filed the instant appeal before this Tribunal under section 61 of the Act.

10. The learned advocate for the appellant submitted as under:-

i. The appellant was not a service provider and only acted as a middle man between an insured person and insurance company and received a commission from the amount of premium. The SST was already paid on such commission thus appellant was not required to be registered.

The OIA was time barred as the same was passed beyond the period prescribed by sub-section (5) and (6) of section 59 of the Act.

ii. The Sindh Finance Bill, 1999 was passed on 27.06.2019 and received assent of the Governor on 05.07.2019 but the Notification inserting rule 31A of the Rules providing special procedure for collection and payment of SST on the service of insurance agent was issued on 01.07.2019 thus the same was invalid.

iii. The Notification for applying reduced rate of 5% was issued prior to the bringing the service of insurance agent in tax net on 01.07.2019 and was thus legally inapplicable.

iv. The Notifications for inserting rule 31A in the Rules and application of reduced rate of 5% were not published in the official gazette thus the same were of no legal consequence.

v. The appellant was subjected to double taxation. The Insurance Company charged SST while issuing policy from the policy holder and again

SST was charged on the same amount while paying commission to the insurance agent.

vii. The Insurance agent is not required to be registered in view of proviso to sub-rule (2) of rule 31 of the rules.

viii. The insurance agent was not required to pay SST under the proviso of sub-rule (3) of rule 31A of the Rules as the liability was fixed upon the person carrying on the business of insurance. Moreover the insurance agent was not required to issue invoice under the sub-rule (5) of rule 31A of the Rules.

ix. The insurance company was liable to pay the SST at the rate of 5% on the commission of an insurance agent. Therefore despite specific Rule that the SSST would be payable by the insurance company, the SST was deducted from the payment made to insurance agent by the insurance companies.

x. The penalty imposed was unjust and without establishing mensrea on the part of the appellant. The reported case of D.G. Khan Cement and Habib Bank Limited and the Order of the Tribunal in the case of AKD Securities were relied upon.

xi. The Pakistan Insurance Brokers Association and the appellant had filed Constitution Petition before the High Court of Sindh in which the notice was issued to SRB. Therefore in view of reported judgment of M/s Noor Muhammad V/s Chief Aviation Authority & another reported as 1987 CLC 393 the department could not register the appellant.

11. The learned representative of the SRB submitted as under.

i. The service of insurance agent is a listed service and according to section 3 of the Act a taxable service is a service listed in the Second Schedule to the Act.

ii. The appellant being a resident person which was providing the services listed in the Second Schedule to the Act. Thus it was required to get registration under section 24 of the Act before providing such services.

iii. The OIA was passed with in time allowed under law after excluding 116 days of adjournments obtained by the appellant and such period had lapsed due to COVID-19 lockdown.



iv. The Notifications issued were in respect of procedure to collect SST and rate of tax and even if the same were not published in the official gazette it had no bearing on the registration process. Moreover the appellant at the one hand had challenged the Notifications and on the other hand was claiming benefits from the same.

v. The proviso to sub-rule (2) of rule 31-A of the rules was applicable only where the appellant was providing services entirely and exclusively as an insurance agent or broker of an insurance company incorporated in Pakistan which was also registered under section 24, or 24A or 24B of the Act subject to condition that the insurance company deducts and withholds the whole of the amount of SST payable on the services of such insurance agent and deposit the same with SRB.

vi. The Insurance agents who were employed with insurance companies or hired by insurance companies on the basis of commission and they work exclusively & entirely for such insurance company are not required for registration or to issue tax invoice and deposit SST.

vii. The appellant is an agent and broker working for more than one insurance company as well as for individuals and has charged commission, thus it was required to be registered.

viii. The SST on insurance policy and on commission of insurance agent are two distinct taxable services listed separately in the Second Schedule to the Act. Thus the question of double taxation does not arise.

ix. The appellant was rightly compulsorily registered and penalty for non-registration was rightly imposed. However the Commissioner (Appeals) had erroneously reduced the penalty.

x. There are eight parallel cases of insurance agents who have got voluntarily registered and there are seven insurance agents who were compulsorily registered and are paying SST.

12. The learned advocate for the appellant in rebuttal submitted as under:-

i. That the insurance agent never issues any invoice to individual nor he works for an individual. The Agent always received commission from insurance companies as he exclusively works for insurance companies.

ii. The registration and filing of return would be a burden upon the appellant. Moreover the fact that some insurance agents had got

voluntarily / compulsorily registered will have no bearing upon the merits of this case.

13. We have heard the learned representatives of the parties, perused the written submissions filed by them and the record made available before us.

14. The dispute is whether the appellant was required to be registered or not. The learned advocate for the appellant has raised various legal and factual grounds. In our opinion the following points require consideration:-

- i. Whether the appellant was a provider of service listed in the Second Schedule to the Act and it was rightly registered compulsorily?
- ii. Whether the OIA was time barred?

15. The first point is "Whether the appellant was a provider of service listed in the Second Schedule to the Act and he was rightly registered compulsorily?" The discussions on this point are as under:-

i. It was not disputed that the appellant is an Insurance Broker/Agent and the service in respect of insurance agents or brokers was a listed service under Tariff Heading 9855.0000 of the Second Schedule to the Act read with definition prescribed under sub-section (53A) of section 2 of the Act. This service was brought to tax net vide Sindh Finance Act, 2019 and was chargeable to Sindh Sales Tax (SST) at the reduced rate of 5% vide notification No.SRB-3-4/21/2019 dated 01.07.2019 under rule 31A of the Rules.

ii. The instant case relates to compulsory registration of the appellant under section 24B of the Act. Section 24 of the Act provides that registration would be required for all persons who are resident and provide services listed in the Second Schedule to the Act from their registered office or place of business in Sindh.

iii. Section 24B of the Act provides that if a person is required to be registered under the Act and that person has not applied for registration, the officer of the SRB shall, after such enquiry as he may deem 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.

M. A. S.

[Signature]

iv. It was not disputed that the appellant was a resident person and was admittedly registered with FBR and was operating in Sindh as insurance agent or broker.

v. The taxable services as per section 3 of the Act are service listed in the Second Schedule of the Act, which was provided by a registered person from its registered office or place of business in Sindh. The economic activity of the appellant was to provide service as insurance agent or broker to insurance companies and was duly covered by the provision of section 4 of the Act read with Tariff Heading 9855.0000.

vi. The appellant while providing services listed in the Second Schedule to the Act could not avoid registration on technical grounds. However the appellant was free to raise all such grounds in case it received notice for assessment of tax.

vii. In view of the above discussions it is held that the appellant was rightly compulsorily registered under section 24B of the Act.

16. The second point is "Whether the OIA was time barred"? The discussions on this point are as under:-

i. The contention of the advocate for the appellant was that the OIA was passed beyond the period prescribed in sub-section (5) of section 59 of the Act. We had examined the OIA and as per para 5 of the OIA the appellant had filed appeal before Commissioner (Appeals) on 16.10.2019 and the same was decided on 30.06.2020.

The Commissioner appeal consumed total 257 days in deciding this appeal out of which the appellant had obtained adjournments for 116 days. Such adjournments are to be excluded under sub-section (6) of section 59 of the Act from the total days consumed in deciding the appeal.

iii. The OIA was apparently passed on 141st day. The Commissioner (Appeals) as per sub-section (5) of section 59 of the Act could pass OIA within 120 days and could also extend 60 days for reasons to be recorded for passing the OIA. In all the Commissioner (Appeals) had 180 days at his disposal for passing the OIA. The OIO in the instant case was passed within 180 days.

iv. In view of the above discussions it is held that the OIA was passed within the statutory time allowed by law.



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17. The penalty was imposed in OIO at Rs.100,000/= which was reduced to Rs.50,000/= by Commissioner (Appeals). However, since there is a contest between the parties on legal points and the appellant and its Association has also filed Constitution Petition before the High Court of Sindh and obtained interim order dated 11.09.2020 restraining the department from taking any adverse action against the appellant pursuant to the compulsory registration. Moreover the department has failed to establish mensrea against the appellant which was a mandatory condition for imposing penalty as held in various pronouncements of the superior courts few of which are mentioned as under:-

- i. Pakistan through Secretary M.O. Finance versus Hard Castle Waud (Pak) PLD 1967 SC I and
- ii. ĩ. DG Khan Cement versus Federation of Pakistan, 2004 SCMR 456.

Considering the above discussions it is held that the appellant was not required to pay any penalty.

18. In view of the above discussions the appeal is dismissed subject to outcome of the Constitution Petition No. D-6031/2019 filed by the appellant and its Association pending adjudication before High Court of Sindh.

19. The copy of the orders may be provided to the learned authorized representative of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER

Karachi:


Dated:17.11.2021

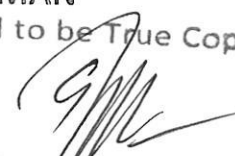
Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-24), SRB, for compliance

Copy for information to:-

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


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN
Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

18/11/2021

Order Dispatched on

18/11/2021

Registrar
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