

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

DOUBLE BENCH

APPEAL NO. AT-40/2020

M/s Data Recall,
Plot No. 241-C, Dagia House, Block-2,
P.E.C.H.S, Off Shahrah-e-Quaideen,
Karachi.....Appellant

Versus

Assistant Commissioner (Unit-01),
Sindh Revenue Board,
M. R. Kiyani Road, KarachiRespondent

Date of Filing of Appeal: 13.11.2020
Date of Hearing: 27.05.2021
Date of Order: 10.06.2021
W. S.

Mr. Arshad Siraj Memon, advocate for appellant.
Mr. Muhammad Ali Siddiqi, AC-SRB and Ms. Uzma Ghory, AC-DR for the
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.85/2020 dated 23.09.2020 passed by the Commissioner (Appeals) in Appeal NO. 20/2019 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 54/2019 dated 22.01.2019 passed by the Ms. Ambreen Fatima, Assistant Commissioner, (Unit-28) SRB Karachi.

02. It was stated in the OIO that the services provided or rendered by Management Consultant, Tariff Heading 9815.4000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act), defined under sub-section (57) of section 2 of the Act, and are taxable under section 8 of the Act since 01.07.2013. Accordingly, the persons providing or rendering the aforementioned taxable services are required to get themselves registered with Sindh Revenue Board (SRB) under section 24 of the Act.

03. It was further stated in the OIO that the appellant was reported to be engaged in providing or rendering the aforementioned taxable services of Management Consultants but as per the record the appellant had failed to get itself registered with SRB. In view of above facts, the appellant was served with an advisory notice dated 05.01.2019 advising it to get voluntarily registered for discharging its obligation under the law.

04. The appellant was served with a Show-Cause Notice (SCN) dated 10.01.2019 under Section 24B of the Act to explain as to why it should not be registered compulsorily under section 24B of the Act, and why penalty as provided under Serial No. 1 of the Table of section 43 of the Act should not be imposed for the violation of section 24 of the Act, 2011.

05. The Assessing Officer passed OIO for compulsory registration of the appellant under section 24B of the Act, 2011, in the service category of "Management consultants", Tariff Heading 9815.4000 and imposed penalty of Rs. 100,000/- under Serial No. 1 of the Table under section 43 of the Act.

The appellant challenged the OIO before Commissioner (Appeals) by way of filing of appeal. The appeal was dismissed with the following observation:-

"13.....It is categorically clear by bare reading of Appellant's list of services vis-à-vis the given definition/ description, specially the underlined portions thereof, that Appellant's contentions in this regard are utterly baseless and therefore, stand dismissed in limine. Appellant has relied upon the tariff heading 9824.0000 of the 1st Schedule to the Act, 2011, and pleaded that they may be registered thereunder, in ignorance of the fact that the

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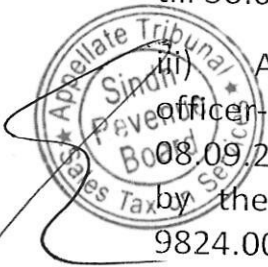
description given against tariff heading 9824.0000 ibid is "Construction Services" which heading has absolutely no relation or nexus with the services that the Appellant is providing. Appellant has also failed to note that the description of services as given in the 1st Schedule ibid that he has so vehemently pressed forward, that is "Management services including fund and asset management services" has not yet been assigned any tariff heading (together with other services listed in the same box of the 1st Schedule). Appellant's reliance thereon is thus, totally misconceived and untenable in law".

Resultantly this appeal was filed by the appellant.

07. The learned advocate for the appellant Mr. Arshad Siraj Memon, submitted as under:-

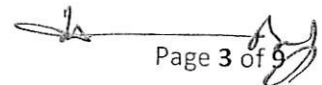
i. The appellant is a partnership firm and was providing services of handling and storage of old record/documents of its clients in its warehouse situated at Site, Karachi. However by no iota of imagination it can be construed that the said work constituted as "Service of Management Consultants" under Tariff Heading 9815.6000.

ii. The services provided by the appellant fall under the Tariff Heading 9847.0000 under the service category "Warehouse or depots for storage or cold storage", which was not chargeable as taxable services within the meaning of section 8 read with section 3 of the Act till 30.06.2019.

 A similar notice dated 02.10.2018 was issued by the learned officer-SRB to the appellant which was complied vide letter dated 08.09.2018, wherein it was brought on record that services provided by the appellant fell under the sub-heading of Tariff Heading 9824.0000 "Data Processing and provision of information, services of engineers, handling and storage of goods" which appeared in the First Schedule of the Sindh Sales Tax on Services Act, 2011 but was not made part of the Second Schedule to the Act.

iv. Another notice was received by the appellant dated 11.10.2018 in which the appellant was called upon to get itself registered under services category of Business Support Services, Tariff Heading




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9805.9200. The appellant once again submitted its reply dated 13.10.2018 through which it was explained that appellant was providing services of storage of record and documents and does not fall under the category of Business Support Services.

v. The OIO was passed in unnecessary haste without providing adequate opportunities of hearing. This action was against the principal of natural justice and in violation of Article 10A of the Constitution of the Islamic Republic of Pakistan.

vi. The matter of registration of appellant was referred by the Commissioner-I to the Assessing officer (AO). This fact was not disclosed to the appellant in the SCN thus it is evident that the proceedings were conducted by AO with preconceived mind under influence of Commissioner-I.

vii. The AO at page 2 of the OIO has herself referred to the website of the appellant and she has observed that the appellant had provided the services of storage of records/records.

viii. The action of AO for compulsorily registration of the appellant under section 24B of the Act under Tariff Heading 9815.4000, "Management Consultant" and imposing penalty under Serial No.1 of the Table under section 43 of the Act were void, factually illegal, and unjustifiable.

08. Mr. Muhammad Ali Siddiqui, the learned AC-SRB Submitted as under:-



The OIO and OIA were lawfully passed by the AO and Commissioner (Appeals)-SRB and are fair and just and not suffering from any illegality.

ii. Both OIO and OIA were passed after considering of all aspects and facts of the case available on the record and after considering the nature of activities of the appellant.

iii. The appellant provided services of "Record Storage and Management" as per its website. These services exclusively fall under the services description of "Management Consultants" taxable at the standard rate of tax.

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iv. The appellant has relied upon the Tariff Heading 9824.0000 of the First Schedule to the Act and pleaded that they may be registered thereunder, in utter ignorance of the fact that the description given against Tariff Heading 9824.0000 is relating to "Construction Services" (together with other services listed in the same box of First Schedule). This heading has absolutely no relation or nexus with the services that the appellant had provided. Appellant's reliance thereon is thus totally misconceived and untenable in law.

v. The perusal of services as provided under the agreement provided by the appellant revealed that it was falling under the service category of "Management Consultant" classified under Tariff Heading 9815.4000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011. These services are covered under the definition of "Management Consultant" as defined under sub-section (57) of Section 2 of the Act.

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

10. The dispute between the parties was the actual nature of services provided by the appellant and its compulsorily registration under section 24B of the Act invoking Tariff Heading 9815.4000, "Management Consultant". The contention of the department was that the appellant had provided services of Management Consultant under Tariff Heading 9815.4000. The contention of the appellant was that it had provided services of handling and storage of old record/documents of its clients in its warehouse and the services do not fall within the definition of management consultant provided in sub-section (57) of section 2 of the Act.

In the instant case the appellant was compulsorily registered under Section 24B of the Act. As per section 24 of the Act registration is required for all persons who are residents, and provide any of the services listed in the Second Schedule to the Act from their registered office or place of business in Sindh and fulfill any other criteria or requirements which the Board may prescribe under sub-section (2) of Section 24 of the Act. Whereas Section 24B of the Act deal with the compulsorily registration and provides



that if an officer of the SRB is satisfied that 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 inquiry as he may deem fit, register the person through an order to be issued in writing and such person shall be deemed to have registered from the date he became liable to registration.

12. The basic requirements of registration are that a person should be a resident person, and providing services listed in the Second Schedule to the Act in Sindh. These requirements are also applicable in case of compulsorily registration. The compulsorily registration could only be ordered if officer of SRB after such inquiry as he deemed fit is satisfied that the person is a resident person providing taxable services in Sindh. The other requirements are advance notice and opportunity of hearing.

13. The registration could not be ordered on the whims of the officer of SRB. It is now well settled that to bring the subject to charge and levy of tax, the burden is upon the Revenue to establish that the said subject is chargeable to tax. Moreover the tax should be levied by clear and unambiguous words and the expressions used in the charging sections and are not to be stretched by any process of interpretation so as to bring a person within the tax net, not falling under the clear and plain language of the statute. It was also well settled that while interpreting a fiscal statute one has to look merely what is clearly stated in the statute and there is neither any presumption nor room for any intendment.

14. The AO while compulsory registering the appellant has not followed the principles elucidated above. He has ordered compulsory registration of the appellant on the presumption that the appellant had provided the services of Management Consultant.

15. The appellant since inception has clearly stated the nature of services provided by it to its clients and submitted supporting agreements from which the nature of service provided by the appellant was clear. However the Department was not clear on this issue, which is evident from first and second SCN dated 27.08.2018 and dated 02.10.2018 respectively which

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were issued invoking Tariff Heading 9815.6000. The SCN's were replied in detail disclosing the actual nature of services provided by the appellant. However third SCN was issued on 11.10.2018 invoking Tariff Heading 9805.9200 which was replied in detail on 13.10.2018 and 23.10.2018 respectively.

16. It is pertinent to point out that at the time of issuance of various SCN's to the appellant Mr. Masood Sabir was acting as Commissioner-I whereas the appeal was also heard by the same officer, and in all fairness said officer should had excused himself from hearing the appeal on the principle that no one can be judge in his own cause. .

17. The AC has failed to demonstrate that the nature of services provided by the appellant fell under Management Consultant which was defined under sub-section (57) of section 2 of the Act. According to the definition the management consultant is defined as "A person engaged either directly or indirectly, in providing services in connection with the management of any business organization or institution in any manner and includes a person who renders advices, consultancy or technical assistance relating to conceptualizing, advising, development, modification, rectification or upgradation of any working system of such business, organization or institution".

It appears from the above definition that the core function of a management consultant is to render advices and expertise to organisations to help them in improving their business performance and management.

18. While performing the function of record keeper of old record, by no stretch of imagination the appellant could perform any of the acts mentioned in sub-section (57) of section 2 of the Act. Moreover for compulsory registration it was necessary that the appellant had provided services listed in the Second Schedule to the Act. Whereas in the instant case the appellant though a resident person but was not providing the services listed in the Second Schedule to the Act and could not be compulsorily registered.

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19. The appellant has contended that the services provided by it fell under the Tariff Heading 9847.0000, "Warehouse or depots for storage or cold storage" which was defined under sub-section (100) of Section 2 of the Act as under:

"(100) "warehouses of depots for storage or cold storages" means the facility or space provided or rendered or let out on rent or otherwise for the storage, cold storage or warehousing of goods including those in the form of liquids and gases, but not including the storage of food grains and fresh vegetables and fruits not subjected to further processing and also not including storage in public bonded warehouse as defined in clause (69);"

The above Tariff Heading was inserted in the Second Schedule to the Act vide Sindh Finance Act, 2019 effective from 05.07.2019, and the same was not taxable services within the meaning of section 8 of the Act read with section 3 of the Act till 30.06.2019. The assertion of the appellant appears to be correct.

20. The term and expression "Goods" was defined under clause sub-section (48) of Section 2 of the Act which reads as under:-

"goods" includes every kind of movable property other than actionable claims, money stocks, shares and securities and does not includes a service or services described under this Act;"

In the instant case the appellant performs the function of preserving and maintaining record of others in its warehouse. The record being movable property, thus falls within the ambit of goods.

The appellant has challenged the OIO on the ground that the same passed in unnecessary haste in violation of principle of natural justice and Article 10A of the Constitution of Pakistan. We have noticed that the SCN was issued on 10.01.2019 and first date of hearing was fixed on 16.01.2019. However on this date the representative of the appellant requested for adjournment till 31.01.2019 but the AO adjourned the hearing for 22.01.2019. Again on this date the appellant filed adjournment application

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which was not considered and the adjudication proceedings were concluded within 12 days. This clearly reflected that apart from violating the principle of natural justice and Article 10A of the Constitution of Pakistan the opportunity of hearing was not properly provided to the appellant as per the requirement of sub-section (2) of section 24 of the Act. 22. In view of the above discussions while maintaining the compulsorily registration of the appellant the OIO and OIA are modified to the extent that the Tariff Heading is altered from 9815.4000, "Management Consultants" to Tariff Heading 9847.0000, "Warehouses or depots for storage or cold storages", and the appellant is deemed to be registered w.e.f. 05.07.2019. Since the appellant was erroneously registered under a wrong Tariff Heading it is not liable to pay any penalty. The Department is directed to correct the Registration Profile of the appellant accordingly.

23. The appeal is disposed of in terms of para 19 and 20 supra. The copy of the order may be provided to the learned representatives of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:

Dated: 10.05.2021


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REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner (Unit-28), SRB, Karachi.

Copy for information to:-

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

Order issued on

21/06/2021

Registrar

Order Dispatched on

21/06/2021

Registrar