

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI  
DOUBLE BENCH-I

APPEAL NO. AT-43/2020

M/s Soneri Bank Limited,  
Rupali House,  
241-242 Upper Mall Scheme,  
Anand Road, Lahore.....Appellant

Versus

Assistant Commissioner, (Unit-09) and 2 others,  
Sindh Revenue Board,  
Sixth Floor, Shaheen Complex,  
M. R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal: 07.12.2020  
Date of hearing: 14.12.2021  
Date of Order: 10.03.2022

Mr. Asad Aslam, FCA , Mr. Aamir Khan, (ITP) along with Mr. Ahmed Ibrahim,  
(ACA) A.F. Ferguson Chartered Accountants for appellant.

Mr. Imran Ali, AC-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.106/2020 dated 18.11.2020 passed by the Commissioner (Appeals)  
in Appeal No. 45/2020 filed by the appellant against the Order-in-Original



(hereinafter referred to as the OIO) No. 56/2020 dated 11.03.2020 passed by Mr. Tasleem Ahmed Ghumro, Assistant Commissioner (Unit-09), SRB Karachi.

02. The facts as stated in the OIO were that the appellant having SNTN # 0801438-8 was registered with Sindh Revenue Board (SRB) under the category of service provided or rendered by "Banking Companies" covered under Tariff Heading 9813.4000 and sub-headings thereof of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) chargeable to Sindh Sales Tax (SST) at the rate of 16%.

03. It was alleged in the OIO that from the scrutiny of the monthly Sales Tax Returns (SST Returns) filed by the appellant with SRB viz-a-viz reconciliation with financial statements for the tax periods January-2013 to December-2013, the discrepancy of value of services short declared & short payment of SST was found as under:

Description	Amount (Rs.)
Fee Commission and Brokerage Income (as per Annual Audited Accounts)	1,123,007,000
Gain on sale of securities	453,754,000
Total value of services	1,576,761,000
Less: Revenue Declared as per SRB Returns	(434,638,782)
Short declared value of services	1,142,122,218
Short paid amount of Tax @ 16%	182,739,555

04. The above discrepancy was communicated to the appellant vide AC's letter dated 03.04.2019 but no written submission or response was received from the appellant.

05. The appellant was served with Show-Cause Notice (SCN) dated 30.04.2019 under Section 23(1) read with 47(1A) of the Act to explain as to why the total short paid amount of SST Of Rs.182,739,555/- should not be assessed & recovered along with default surcharge under Section 44 of the Act. The appellant was also called upon to explain as to why penalties listed

*M.A.*

*[Signature]*

under Serial No. 2 and 3 of the table under Section 43 of the Act should not be imposed for contravention of the various provisions of the Act.

06. The appellant filed written reply and stated that the revenue under the heading "Fee, Commission and Brokerage" pertained to Pan Pakistan and such amount also included certain exempted and non-taxable services and the appellant provided some record. On the basis of scrutiny of available records and the submissions by the appellant, the following position has emerged:-

Breakup of exempt/ non-taxable income (Sindh)		
Description	Amount Rs.	Tax Involved
Penal Markup	389,000	62,240
Commission on Bancassurance	46,775,000	7,484,000
Commission received from SBP on SSC & DSC & Prize Bond	2,291,000	366,560
CIB report charges recovered, stock inspection charges, late/pre-payment surcharge and misc. expense reimbursement from customers	73,882,000	11,821,120
<b>Total</b>	<b>123,337,000</b>	<b>19,733,920</b>

The Assessing Officer (AO) passed the OIO determining the SST at Rs. 19,733,920/- for the tax periods from January-2013 to December-2013 and ordered for the recovery of SST under Section 23(1) read with section 47(2A) of the Act alongwith the default surcharge under Section 44 of the Act (to be worked out at the time of payment of principal tax). The AO also imposed penalty of Rs.120,000/= under Serial No.2 of the Table under section 43 of the Act for non-filing the true and correct SST returns for the periods January-2013 to December-2013 @ Rs.10, 000/= per tax return and penalty of Rs.986, 696/= under Serial No. 3 of the Table under section 43 of the Act for not depositing the SST for the periods January-2013 to December-2013 @ 5% of the tax due.



*[Handwritten signature]*

08. The appellant had challenged the said OIO by way of filing of appeal under section 57 of the Act before Commissioner (Appeals), SRB who upheld the OIO for the principal tax amount of Rs.19,671,680/- along with due default surcharge (under 44 of the Act which was to be calculated at the time of payment of the said principal amount). The Commissioner (Appeals) however maintained the penalty of Rs.120,000/- on account of non-filing of monthly returns but reduced the penalty of Rs.986,696/- levied under Serial Number 3 of Table under Section 43 of the Act to Rs.100,000/-. Thus total penalty of Rs.220,000/- was levied.

09. The learned representative of the appellant Mr. Asad Aslam, ACA submitted as under:-

i. The Commissioner (Appeals) had levied SST on Commission on Bancassurance, Commission received from SBP sale of SSC, DSC and Prize Bonds and CIB report charges, stock, inspection charges, late payment surcharge, miscellaneous expenses, and reimbursement from customers.

ii. The levy of SST on Commission on Bancassurance was already held non-taxable by the Tribunal in case of Allied Bank Ltd. and Muslim Commercial Bank relying upon the reported case of High Court of Sindh in Citibank Pakistan.

iii. The Commissioner (Appeals) has relied upon the earlier order of Tribunal instead of the recent order in the case of MCB and failed to refer the later order which clearly reflected his malafide.

iv. The appellant had not received commission from SBP but received rebate on sale of government securities which was not a service thus it was not covered under any Tariff Heading.

v. The CIB Report charges and others, comprised of documents handling charges, rebate received from foreign banks on clearing of LC amount recovered from staff for not serving

*AS*

*Asad Aslam*

notice after resignation and fine received from staff members on account of violation of companies rules and the same was not covered under any Tariff Heading and no SST could be charged.

- vi. The Tariff Heading 9813.4990 (other services not specified elsewhere) was not an independent sub Tariff Heading but was sub-sub heading of Tariff Heading 9813.4910 (safe vaults) and could not be treated to cover the entire services provided by banks.
- vii. The Tariff Heading 9813.4900 (other services, not elsewhere specified) was added vide Sindh Finance Act, 2019. It was submitted that before amendment in the Schedule the Bancassurance was not taxable, but after the amendment of 2019 the appellant was paying SST on bancassurance service.

viii. The OIA was time barred and reference was given to paras 10 to 12 of OIA in support of such contention. It was submitted that the appeal before Commissioner (Appeals) was filed on 08.04.2020 and was decided on 18.11.2020 and the Commissioner (Appeals) had thus consumed 224 days in finalizing the OIA. The appellant had not obtained any adjournments. The appeal was to be decided within 120 days and after extension of 60 days the appeal had to be decided within 180 days which was not done, and instead the appeal was decided on 224<sup>th</sup> day.

10. The learned Assistant Commissioner-SRB submitted as under:-

- (i) That the parawise comments were filed on 17.12.2021 and further comments were filed on 01.04.2021. Moreover, the Commissioner (Appeals) had filed Report dated 05.08.2021 and in furtherance of order of the Tribunal filed another

*MCS*



Report dated 03.06.2021 which may be considered as arguments on behalf of the department.

- (ii) The assessment order was finalized on the basis of figures available in the financial statement of January-2013 to December-2013 and further break up provided by the appellant.
- (iii) In the case of M/s Zarai Taraqiati Bank Appeal No.AT-51/2014 order dated 16.01.2016 in para 9 & 11, the Tribunal had upheld the assessment order levying SST on loan application fee under Tariff Heading 9813.4990 for the tax periods July-2011 to December-2011.
- (iv) No evidence, in respect of alleged amount recovered from the staff was provided at the adjudication stage or appellate stage.
- (v) The Reports submitted by Commissioner (Appeals) clearly Indicate that OIA was not time barred and had been passed within the time frame allowed by law. Moreover such grounds taken subsequently while filing additional grounds were not maintainable.
- (vi) The earlier orders passed by the Tribunal in respect of Bancassurance was challenged by the department before the Honorable High Court of Sindh and it was waiting for the hearing.
- (vii) The appellant being a Bank was covered under Tariff Heading 98.13. Moreover all listed services provided by it were taxable and those not specifically listed were covered under Tariff Heading 9813.4990.
- (viii) The reliance of the Tribunal on the decision of Honorable High Court of Sindh in case of M/s Citi Bank was misplaced for the



M.C.S.

reason that the said case was in respect of Federal Excise Duty (FED).

11. The learned representative of the appellant submitted the following additional grounds on 13.10.2021.

- i. The Commissioner (Appeals) failed to consider and appreciate the submissions made before him. Moreover the OIO was finalized merely on the basis of figures available in the audited accounts without appreciating the detailed breakup and description of income submitted by the appellant, and therefore was not sustainable in law.
- ii. The order passed by the Commissioner (Appeals) was time barred and was passed beyond the statutory period of 180 days inclusive of extended time of 60 days allowed under section 59(5) of the Act.
- iii. The OIO and OIA were not sustainable in law for the reason of being barred by limitation.



12. We have heard the oral submission and considered the written submissions made by learned representatives of the parties and perused the record made available before us.

13. The SCN in this matter was issued on account of short payment of SST on Fee Commission and Brokerage Income valuing Rs.1,123,007,000/= and Gain on sale of securities valuing Rs.453,754,000/= involving payment of SST 182,739,555/= at the rate of 16% without mentioning the relevant Tariff Heading of 9813.4000.

14. The AO while passing the OIO on the basis of information provided by the appellant bifurcated the Fee Commission and Brokerage Income into Fee Commission and Brokerage Income, Gain on Sale of Securities, Cheque Book issuance, Utility Bills Collection, Commission on Bancassurance, Penal Markup, Commission received from SBP on DSC, SSC, and Prize Bonds and

*Handwritten signature/initials*

*Handwritten signature*

CIB Report charges. Moreover the value of service shown under these heads amounted to Rs.123,337,000/- on which the SST was charged at Rs.19,733,920/-.

15. The following points require consideration:-

- i. Whether a ground not taken in the grounds of appeal could be raised subsequently?
- ii. Whether the OIA was time barred as alleged by the appellant?
- iii. Whether the appellant was not liable to pay SST as determined in the OIO?

16. The first point is "Whether a ground not taken in the grounds of appeal could be raised subsequently?" The discussions on this point is as under:-

- a) This ground was taken by the appellant while making his submissions and thereafter filed additional grounds including this ground. The AC had objected on taking such additional ground and submitted that the same could not be taken subsequently. In reply the learned advocate for the appellant submitted that the ground was legal and could be raised at any stage of the proceedings. Moreover this ground was related to the jurisdiction of SRB to recover SST on the basis of a time barred OIA, thus such grounds did not require any factual inquiry.
- b) The contention of the AC was correct that this ground was not raised in the grounds of appeal. It is also true that section 61 and 62 of the Act do not provide for allowing additional grounds after filing of appeal as provided under sub-section (3) of section 58 of the Act. However the Act does not prohibit filing of additional ground after filing of the grounds of appeal. This is a legal ground and in case the OIA was time barred the



*M.S.*

*[Handwritten signature]*



recovery of tax dues based on it could not be affected. This also relates to the jurisdiction of SRB to recover tax dues.

- c) The point of jurisdiction is very important since it means to hear and decide the controversy between the parties in accordance with law. Moreover every authority before proceeding with the matter is required to determine its jurisdiction. In the reported case of Khyber Tractors versus Pakistan, PLD 2005 SC 842 it has been held as under:-

*"The question of jurisdiction of a forum is always considered to be very important and any order passed by a Court or forum, having no jurisdiction, even if it is found to be correct on merits, is not sustainable".*

- d) The ground urged by the appellant is a legal ground. The Tribunal is vested with the power to decide factual as well as legal issues. Moreover the legal ground could be raised at any stage of proceedings and the Act does not specifically prohibit raising of such additional ground at later stage. The additional ground raised by the appellant does not require any factual enquiry since matter could be resolved on the basis of material available on record. In the reported case of Caltex Pakistan Limited Versus Collector, Central Excise and Sales Tax it was held as under:-



*"6. This is settled principle of law that a question of law arising out of the facts of the case relating to the fundamental issues involved therein, even if was not raised before the lower forum can be allowed to be taken before the higher forum and this Court for doing complete justice may, if the facts and circumstances of a case so demand, allow to raise a question of law which was not as such taken before the High Court. This is the duty of the Court seized of the matter, to apply the correct law to meet the ends of justice".*

*M.S.*

- e) The ground that the OIA is time barred is not a mere technicality. In case the OIA is time barred a valuable right is accrued in favour of the appellant and recovery could not be affected. It is now well established principal of law that the technicalities should not come in the way of dispensation of justice and every procedure not prohibited by law could be adopted. The Honorable Supreme Court of Pakistan in the reported case of Imtiaz Ahmad versus Ghulam Ali, PLD 1963 SC 382 has held as under:-

*".....the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on ground of public policy.....Any system which by giving effect to the form and not the substance defeats substantive rights (and) is defective to that extent".*

- f) The raising and filing of additional grounds subsequent to filing of appeal is a matter of procedure and could be allowed to be raised to meet the ends of justice. In view of the above discussions it is held that a ground not taken in the ground of appeal could be raised subsequently, thus the appellant was allowed to raise additional ground.

17. The second point that requires consideration is "Whether the OIA is time barred as alleged by the appellant?" The discussions on this point are as under:-

- a) In the instant case the appeal before Commissioner (Appeals) was filed on 08.04.2020 and the same was decided on 18.11.2020 after lapse of 224 days. However it is apparent from the documents annexed with the Report that first Notice of Hearing was issued on 28.05.2020 (after lapse of more than one month and twenty days) for hearing on 03.06.2020 on

*MCS*

*[Signature]*

Skype. No Note Sheet dated 03.06.2020 is available on record. Furthermore it appears from the Note Sheet dated 16.06.2020 that on 03.06.2020 after hearing the case was adjourned to 05.06.2020 for filing of comments by the AC/DR and the case was taken up on 16.06.2020, and after hearing the same was reserved for order.

- b) The Commissioner (Appeals) after concluding the hearing on 16.06.2020 could not pass the OIA till 15.09.2020. However at the back of the appellant and without supplying the copy of the order of extension he extended 60 days period for passing OIA.
- c) A report was called from Commissioner (Appeals) which was submitted on 05.08.2021 and repeated on 11.11.2021. The copy of OIA dated 18.11.2021 was dispatched to the appellant on 01.12.2021 after unexplained delay of 14 days. It is apparent from the Report that the appellant had not obtained adjournment for a single day. In absence of adjournment on the part of the appellant the time available for passing of OIA was 120 days as provided under sub-section (5) of section 59 of the Act. The Commissioner (Appeals) in exercise of power under sub-section (5) of section 59 of the Act could extend sixty days for passing of OIA which was done on 15.09.2020 as such the total days available for passing OIA were 180 days.
- d) The OIA was passed on 224<sup>th</sup> day, whereas the days available were 180 days. The period provided under sub-section (5) of section 59 of the Act was mandatory as held in the reported case of Collector Sales Tax Gujranwala versus Super Asia Din Muhammad, 2017 SCMR 1427 as under :-

*"9. Another aspect of the matter is that when a statute requires that a thing should be done in a particular manner*

*MCS*

*[Handwritten signature]*

or form, it has to be done in such manner. But if such provision is directory, the act done in breach thereof would not be void, even though non-compliance may entail penal consequences. However, non-compliance of a mandatory provision would invalidate such act. In this context, reference may be made to the case of Rubber House v. Excelsior Needle Industries Pvt. Ltd. (AIR 1989 SC 1160). Thus, having held the first proviso to section 36(3) supra to be mandatory, the natural corollary of non-compliance with its terms would be that any order passed beyond the stipulated time period would be invalid".

e) The case of super Asia relates to proviso attached to sub-section (4) of section 11 and proviso attached to sub-section (3) of section 36 of the Sales Tax Act, 1990. The provisions are identical to sub-section (3) of section 23, sub-section (3) of section 47 and sub-section (5) of section 59 of the Act and are fully applicable to the facts of the instant case.

f)  The Commissioner (Appeals) in para 10 of the OIA had tried to take shelter under the lock down announced by Government of Sindh due to Covid-19 Pandemic from 22.03.2022 to the end May 2020 and added such period in the days available for passing the OIA. The Commissioner (Appeals) could neither extend the period for passing the OIA nor could exclude the number of days except as provided in law. Similarly the Deputy Commissioner (Admin)/(Hqrs) was not vested with the power to adjourn the hearing of appeal till further order nor could direct that such period shall not be reckoned or computed for the statutory time lapsed under sub-section (5) of section 59 of the Act.

g) The proceedings before the Commissioner (Appeals) were time bound proceedings and the Commissioner (Appeals) was bound to follow the procedure as provided under sub-section

*M.S.*

*[Signature]*

(5) and (6) of Section 59 of the Act and not otherwise. The law does not permit exclusion of period/days for any other reason. The period lapsed due to Covid-19 could not be excluded by the Commissioner (Appeals). Only the days/period mentioned in sub-section (6) of section 59 of the Act could be excluded and the same are i) any period during which the proceedings were adjourned on account of stay order or proceedings under section 65 of the Act, ii) the time taken through adjournment by the appellant. This aspect of the case was considered in the case of Collector Sales Tax Gujranwala vs. Super Asia Din Muhammad reported as 2016 SCMR 1427 as mentioned supra and it was held as under:-

*"...7. From the plain language of the first proviso, it is clear that the officer was bound to pass an order within the stipulated time period of forty-five days, and any extension of time by the Collector could not in any case exceed ninety days. The Collector could not extend the time according to his own choice and whim, as a matter of course, routine or right, without any limit or constraint; he could only do so by applying his mind and after recording reasons for such extension in writing. Thus the language of the first proviso was meant to restrict the officer from passing an order under section 36(3) supra whenever he wanted. It also restricted the Collector from granting unlimited extension. The curtailing of the powers of the officer and the Collector and the negative character of the language employed in the first proviso point towards its mandatory nature. This is further supported by the fact that the first proviso was inserted into section 36(3) supra through an amendment (note:- the current section 11 of the Act, on the other hand, was enacted with the proviso from its very inception in 2012). Prior to such insertion, undoubtedly there was no time limit within which the officer was required to pass orders under the said section. The insertion of the first proviso reflects the clear intention of*



*M.S.*

A handwritten signature in black ink, appearing to be "J. Singh".

*the legislature to curb this earlier latitude conferred on the officer for passing an order under the section supra. When the legislature makes an amendment in an existing law by providing a specific procedure or time frame for performing a certain act, such provision cannot be interpreted in a way which would render it redundant or nugatory. Thus, we hold that the first proviso to section 36(3) of the Act [and the first proviso to the erstwhile section 11(4) and the current section 11(5) of the Act] is/was mandatory in nature.*

It is thus clear from the above decision that the Commissioner (Appeals) was bound to pass order within time period available as per law which was mandatory.

- h) The Commissioner (Appeals) in his Report had stated that the original statutory time had expired on 19.09.2020 which was factually incorrect and the Commissioner (Appeals) had tried to mislead the Tribunal. The original statutory time of 120 days from the date filing of appeal i.e. 08.04.2020 had expired on 06.08.2020. The sixty days period/time was extended on 15.09.2020 much after expiry of original statutory period of 120 days.



The Commissioner (Appeals) had two remedies available as per law. Firstly he could request the Board under section 81 of the Act to condone the time limit if expired due to lock down. Secondly, he could pass an order under sub-section (7) of section 59 of the Act for transfer of undecided appeal to the Tribunal. Both these remedies were not availed.

- j) It is evident from the face of record that the Commissioner (Appeals) has shown laxity in dealing with the appeal since the first notice of hearing was issued by him after lapse of one month and twenty days without extending the period for passing OIA.

*M. D.*

*[Handwritten signature]*

- k) In view of the above factual position we hold that the OIA was time barred, and was passed beyond the period as provided by law.

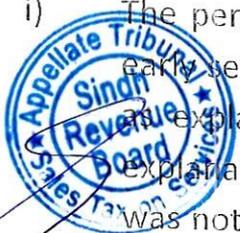
18. The third point which required consideration was "Whether the appellant was liable to pay SST as determined in the OIO?" The discussions on this point are as under:-

The AO passed OIO charging the SST under the following heads:-

<u>Description</u>	<u>Value of service</u>	<u>SST</u>
Penal Markup	Rs. 389,000/-	Rs. 62,240/-
Commission Bancassurance	Rs. 46,775,000/-	Rs. 7,484,000/-
Commission received from SBP on DSC, SSC and Prize Bond	Rs. 2,291,000/-	Rs. 366,560/-
CIB Report Charges Etc.	Rs. 73,882,000/-	Rs. 11,821,120/-
Total	Rs.123,337,000/-	Rs. 19,733,920/-

- a) Penal Mark up: the discussion on this sub-head is as under:

i) The penal markup was charged from the customers on early settlement of loan or late payment of installments as explained by the appellant. It is evident from the explanation of the appellant that commission received was not in respect of providing or rendering any service. However the AC submitted that the same was a service and covered under Tariff Heading 9813.4990 (other services not specified elsewhere). The penal markup was charged from the customers who had either made early settlement of loan or paid delayed installments. Moreover for charging SST it is necessary that element of service should be available. Apparently no element of service was involved in charging penal markup. The sales tax on services could only be charged / levied on providing or rendering services in furtherance of an



*M.S.*

*[Handwritten signature]*

economic activity as provided under section 4 of the Act. There is no specific Tariff Heading in the Second Schedule to the Act to cover penal markup and in absence of specific Tariff Heading, SST could not be charged on the assumption and presumption of the AO.

- ii. The tax periods involved in this appeal were from January-2013 to December-2013. The Tariff Heading under which the SST was charged for the relevant periods was as under:-

9813.4900: Safe deposit lockers.

9813.4910: Safe vaults.

9813.4990: Other services not specified elsewhere (added vide Sindh Sales Tax on Services (Amendment) Ordinance, 2011 effective from 01.11.2011 and was converted into Act, 2012 effective from 26.01.2012).

It is apparent that during the tax periods involved in this appeal Tariff Heading 9813.4990 was not an independent sub-heading, but was sub-sub-heading of Tariff Heading 9813.4910. The said Tariff Headings were changed vide Sindh Finance Act, 2019 and after such change the same read as under:-

9813.4800: Safe deposit lockers and safe vaults.

9813.4900: Other services, not specified elsewhere.

- iii. That after above change in the Tariff Headings the Tariff Heading 9813.4900 became a sub-heading under the main Tariff Heading 98.13. The amendment is curative in nature and the legislature had realized the mistake and corrected the same to bring other services provided or rendered by banking companies in tax net. The sub-heading 9813.4000 read as "services provided or rendered by banking companies in relation to". It appears from this description that all services provided





by banking companies were not covered and only those services were covered which fell under the ambit of sub-Tariff Headings or sub-sub-Tariff Headings. Under the main Tariff Heading there was a number of sub-headings and sub-sub-headings. The mechanism and listing of sub-heading and sub-sub-headings was considered by the High Court of Sindh in the reported case of M/s Citibank Limited versus Commissioner Inland Revenue and another, 2014 PTD,284 and it was held as under:-

*"...18...The attempt by learned counsel to conclude from the enumeration of the persons that all the services provided by them were included in Heading No.98.13 cannot be accepted. This would render otiose the listing of specific services in the various sub-headings"..... It follows that "the submission by learned counsel for the Department, which would lead to the contrary result, is not tenable and cannot, with respect, be accepted".*

In the same judgment it was held as under:-



*It may also be noted that some of the sub-headings in Heading No. 98.13 were described as "other". This is in fact a common device, to be found abundantly in the HS System in its various chapters. Some of these are independent sub-headings, which operate in their own right, but others are merely subordinate to other sub-headings. As learned counsel for the applicant pointed out (correctly in our view) all the "other" sub-headings in Heading No. 98.13 were in fact subordinate (i.e., sub-sub-) headings, which were linked to various sub-headings, none of which was relevant for present purposes..."*

*M.S.*

*[Handwritten signature]*

- iv. The Tariff Heading 9813.4990 was not an independent sub-heading during the tax periods involved in the appeal but was subservient to Tariff Heading 9843.4910 (safe vaults) and could not cover the charging of SST on penal markup.
- v. In view of the above discussions we hold that the penal markup was not a service thus no SST could be charged thereon.
- b) Commission Bancassurance: The discussions on this sub-head are as under:-
- i. The Bancassurance Agreements were entered into with the insurance companies for marketing of products of insurance companies to the customers of the bank (appellant) which in turn received commission from the insurance companies and not from the customers of the bank. As discussed in para 20 (c) and (d) above during the tax periods involved in this appeal there was no independent sub-Tariff Heading relating to Bancassurance and the Tariff Heading 9813.4990 under which the SST was charged was not an independent sub-Tariff Heading but was an sub-sub-Tariff Heading of 9813.4910 relating to safe vaults. Therefore the service of Bancassurance could not be treated as service under this Tariff Heading. Furthermore in our earlier decisions relying upon the reported case of Citibank Supra we had already held that Bancassurance was not covered under Tariff Heading 9813.4990. The details of orders are as under:-
- 1) Appeal No. AT-205/2015, Allied Bank Limited versus AC-SRB, Order dated 28.08.2017.



*[Handwritten signature]*

II) Appeal No. AT-36/2019, Summit Bank Limited versus AC-SRB, Order dated 24.03.2020.

III) Appeal No. AT-10/2021, Burj Bank limited versus AC-SRB, Order dated 07.05.2021.

ii. In view of the above discussions we hold that during the tax periods involved in this appeal the service of Bancassurance was not covered under Tariff Heading 9813.4990 thus no SST could be charged thereon.

c) DSC, SSC and Prize Bond: The discussions on this sub-head are as under:-

i. No specific sub-Tariff Heading is available under main Tariff Heading 98.13. The commission earned was on issuance of DSC, SSC and Prize Bonds and was received from the SBP and not from the customers, end users. Moreover there was no independent sub-Tariff Heading relating to charging of SST on earning of commission on issuance of DSC, SSC, and Prize Bonds on behalf of State Bank during the tax periods involved in this appeal as discussed in para 18 (c) and (d). The appellant had provided or rendered services to SBP against the consideration/commission and the same become taxable after curative amendment in the Second Schedule to the Act vide Sindh Finance Act, 2019. The Tariff Heading 9813.4990 under which the SST was charged was not an independent sub-Tariff Heading but was a sub-sub-Tariff Heading of 9813.4910 relating to safe vaults. The service could not be treated as service under this Tariff Heading during the tax periods involved in this appeal.

ii. In view of the above discussions we hold that no SST could be charged during the tax periods involved in this

*[Handwritten signature]*



*[Handwritten signature]*

appeal on commission earned from issuing DSC, SSC and Prize Bond.

d) The CIB Report Charges: The discussions on this sub-head are as under:-

i. It was explained that other heads were also included under this head i.e. handling charges in relation to pledge and loan and charges received on account of reimbursement from customers, rebate received from foreign bank as rebate for processing LCs, staff notice period pay recovered on account of non-service of required notice while leaving the service of the bank, other recoveries from staff was on account of violation of rules committed by the staff of the bank. It is apparent from the above narration that except the services provided to foreign bank for processing of LCs against consideration none of other items come within the ambit of services. The appellant had provided or rendered services to foreign banks against the consideration/commission and the same become taxable after curative amendment in the Second Schedule to the Act vide Sindh Finance Act, 2019.

ii. In view of the above discussions we hold that during the relevant tax periods such services provided were not covered in any of the sub-Tariff Heading or sub-sub-Tariff Heading thus no tax could be charged.

e) In view of above position explained in para (a) to (d) supra we hold that the appellant was not liable to pay SST as determined in the OIO during the tax periods involved in the appeal.

19. The AC while issuing the SCN had not mentioned the relevant Tariff Heading 9813.4990 and had simply stated that the appellant was registered



under Tariff Heading 9813.4000. Same is the position in the OIO wherein no specific Tariff Heading under which the services provided or rendered fell were either invoked or mentioned. 9813.4000 was a sub-Tariff Heading dealing with the services provided or rendered by banking companies and under this Tariff Heading there were many other sub-Tariff Headings and sub-sub-Tariff Headings. The Tariff Heading was invoked for the first time in the OIA. The mentioning of relevant Tariff Heading is necessary as without mentioning the same and merely relying upon the main Tariff Heading would defeat the purpose of listing of services in the Second Schedule to the Act.

20. In view of the above discussions the appeal is allowed and the OIA and OIO are set aside.

21. The copy of this order may be provided to the learned authorized representative of the parties.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

Certified to be True Copy

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Karachi:

Dated:10.03.2022

Copy Supplied for compliance:

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

Order Issued on

10/03/2022

Registrar

Copy for information to:-

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

Order Dispatched on

10/03/2022

Registrar