

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD
AT KARACHI

DOUBLE-BENCH-I

APPEAL NO. AT-05/2021

Assistant Commissioner (Unit-09),
SRB, Karachi.....Appellant

Versus

M/s First Women Bank Limited,
Karachi.....Respondent

Date of Filing of Appeal: 25.01.2021
Date of Hearing: 04.02.2021
Date of Order 02.03.2021

Mr. Hasan Abbas, AC and Ms. Uzma Ghory, AC-DR, SRB for appellant



ORDER

Justice Madeem Azhar Siddiqi: This appeal has been filed by the Assistant Commissioner (Unit-09), SRB Karachi challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.101/2020 dated 09.11.2020 passed by the Commissioner (Appeals) in Appeal NO. 388/2018 filed by the respondent against the Order-in-Original (hereinafter referred to as the OIO) No. 904/2018 dated 29.10.2016 passed by Mr. Mehrab Khan Assistant Commissioner, (Unit-09) SRB Karachi.

02. The facts as stated in the OIO were that the respondent was engaged in providing or rendering banking services which were covered under Tariff Heading 9813.4000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011

(hereinafter the Act.) and was liable to charge, collect and pay due Sindh Sales Tax (SST) on such services at the prescribed rate.

03. It was further stated in the OIO that the respondent was selected for audit under section 28 of the Act, 2011 vide letter No. SRB/Comm-Audit/2016-2017/0121 dated 11th April, 2017. During course of audit proceedings, following discrepancies were detected.

a. UNDER DECLARATION OF TAXABLE SERVICES/REVENUE.

Scrutiny of financial statement revealed that the respondent had earned services revenue of Rs.1,626,228/- during the year ended December, 2016, which involved SST amounting to Rs.211,410/-. However, the appellant failed to deposit the due SST and the details of service are given in table-01 as under:-

Services Revenue Declared as-Other Income	Commission on Bancassurance	Revenue Declared as-Miscellaneous	Total Services Revenue Earned	SST Payable
207,924/-	158,475/-	1,259,829/-	1,626,228/-	211,410/-

TAXCHARGEABLE ON THE EXEMPTED SERVICES

Scrutiny of general ledger submitted by the respondent further revealed that it had declared banking services revenue amounting to Rs.913,209/- as exempted from levy of SST on self-assumption basis. The respondent had failed to deposit SST amounting to Rs. 118,117/= with SRB. The details of short payment are given in table 02 as under:-

Commission on Sale of Govt. Securities	Commission on Bancassurance	B-Form Charges	Total Taxable Income	SST Payable
412,274/-	446,357/-	54,678/-	93,209/-	118,717/-

04. The respondent was issued Show-Cause Notice (SCN) dated 09.08.2018 to explain as to why Sindh sales tax amounting to Rs.330,127/- for the period January 2016 to December, 2016 shall not be assessed under section 23(1) of the Act, 2011 and why the said amount shall not be recovered along with default

surcharge (under section 44) and why penalties under Serial No.3 of the table under section 43 of the Act should not be imposed.

05. The respondent filed Written Response dated 16.08.2018 stating there in that the Bancassurance does not involve any service as no specific Sub Tariff Heading was available under main Tariff Heading 98.13. The Bank received commission from State Bank of Pakistan on account of sale of Government Securities and the same was not covered under Tariff Heading 98.13. Charges relating to Form 'B' were collected by the bank where the cheque book was lost or was issued without the cheque book requisition slip.

06. The Assessing Officer (AO) passed OIO concluding that the services receipt amounting to Rs.2,539,437/= was liable to SST of Rs.330,127/= and the same was recoverable under section 23 (1) and 47 of the Act alongwith default surcharge. The AO also imposed penalty of TRs.16,506/= under Serial No. 3 of Table under section 43 of the Act.

07. The respondent challenged the said OIO before Commissioner (Appeals) by way of filing of Appeal. After hearing the learned Commissioner (appeals) upheld the levy of tax on Commission on sale of Government Securities and Bancassurance amounting to Rs.53,596/= and Rs. 58,013/= respectively. However the Commissioner (Appeals) deleted the SST levied on Form 'B' charges amounting to Rs. 54,768/= involving SST of Rs. 7,108/=. The commissioner (Appeals) also upheld the levy of SST on Bancassurance amounting to Rs.20,602/=, SST on Tender Fee amounting to Rs. Rs.27,030/= and the SST on sale of motor-bike was deleted. The total SST confirmed by Commissioner (Appeals) amounting to Rs. 320,835/= against Rs.330,127/= assessed by the AO. The difference was amounting to Rs.9,292/= relating to deletion on Form 'B' charges, ^{which} has thus been challenged in this appeal.

08. Mr. Hassan Abbas the learned AC-SRB submitted that 'B'-Form charges were covered under Tariff Heading 9813.4990 (other services not specified elsewhere) and the Commissioner (Appeals) on erroneous consideration deleted the levy of SST. He submitted that issuance of Form 'B' against consideration for issuance of cheque book without the requisition slip required for issuance of



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cheque book is a service and the Commissioner (Appeals) has wrongly connected Form 'B' with issuance or reissuance of cheque book as Form 'B' charges were recorded in a separate ledger and it was different service comparing with issuance or re-issuance of cheque books. He further contended that the Commissioner (Appeals) has wrongly deleted the imposition of penalty.

We have heard the learned AC and perused the record made available before us.

09. The dispute is only in respect of SST deleted by Commissioner (Appeals) on Form 'B' charges. The Form "B" was issued to those customers who required issuance of cheque book without producing the cheque book requisition slip.

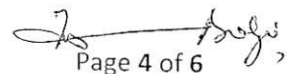
10. The issuance of cheque book was exempted from payment of SST in view of sub-rule (2) of rule 30 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) the service of issuance of cheque book was exempted from payment of SST. Issuance of Form 'B' itself was not a service, but the same was issued for record purposed as the _cheque book requisition slip was not produced.

11. We have carefully considered the reason recorded by Commissioner (Appeals) in para 28 of the OIA. The relevant portion is reproduced as under:-

.....However, I differ with respondent AC's view point in respect of the third account in this segment, that is, levy of SSTs on 'B-Form charges' earned by the Appellant, being Rs.54,678/- (SSTs involved being Rs.7,108/-. I rather, agree with Appellant's contention that materially, there is no difference in the process of issuance or that of 're-issuance' of a cheque book (via 'Form-B'). Since issuance of original cheque book is exempted from the levy of SSTs under Rule-30 of the Rules-2011, by implication, re-issuance of the same should also be accorded the same statement in law. Mere introduction of a separate proforma for a banking process is no ground to take-back the exemption granted by the legislature. I accordingly set-aside recovery of SSTs of Rs.7,108/- and hold the Appellant liable to pay SSTs to the extent of Rs.111,609/-_only in this segment".

12. We do not find any illegality or infirmity in the above findings recorded by Commissioner (Appeals) and we hold that the Commissioner (Appeals) had rightly deleted revenue from Form 'B" charges amounting to

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Rs.7,108/= as the said charges were not collected against any taxable service.

13. The Commissioner (Appeals) is vested with the discretion to impose or not to impose penalty. However under the circumstances of the case the Commissioner (Appeals) had rightly exercised the discretion vested under him. In the reported case of Assistant Collector Customs, C.E. Karachi versus M/s Mari Gas Company Limited 2003 PTD 818 a learned DB of High Court of Sindh has held as under:-

"The use of phrase "shall pay" makes it mandatory on the person to pay the amount while the use of the words "he shall be liable to pay" gives a discretion to the concerned officer of the Excise Department to impose additional tax or waive it totally if, in his opinion, the circumstances so require".

14. In view of the above discussions we do not find any merits in this appeal, which is accordingly dismissed in limine.

This appeal was filed mechanically without application of mind for the sake of filing of appeal. Apparently the Cluster Head as well as Commissioner-I had not applied their mind while granting approval for filing of this appeal which was filed in violation of Standing Order No.01/2019 issued by the Board. It was directed in the Standing Order that unnecessary appeals were not to be filed and decision of filing of appeals should be taken with the approval of Commissioner on merits instead of filing of appeal just as a matter of routine.

16. Before parting with this order we want to draw the attention of the learned Chairman, Sindh Revenue Board towards the decision of the Honorable Supreme Court of Pakistan in the case of Chairman FBR Versus Hazrat Hussain and others (2018 SCMR 939 in which it was held as under:-

".....It is to be noted that appeals should not be filed as a matter of routine or because a decision has been rendered against the Department. Decisions should be taken on a reasonable basis. It is not


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advisable for government departments to waste public time and money by filing appeals routinely....."

17. The above quoted judgment of the Honorable Supreme Court of Pakistan is binding precedent on all forums in the Country in view of Article 189 of the Constitution. Reference can be made to (2014 SCMR 1557, Commissioner Income Tax Versus Habib Bank Limited). The Board/learned Chairman, SRB should take notice of filing of appeals by the Departmental Representatives having no merits, and this way the department is wasting public time and money. I am sanguine that the Board/Chairman will look into the matter and take necessary steps to avoid repetition of the same. A copy of this order may be provided to the Learned Chairman, SRB for placing the same before the Board for perusal and necessary action in this regard. We are also hopeful that the Learned Chairman will let us know about the progress in the matter.

18. The copy of the Order may be provided to the learned AC as well as to the respondent.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:
Dated: 02.03.2021

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy Supplied for compliance:

- 1) The Chairman, SRB, Karachi
- 2) The Assistant Commissioner, SRB, Unit-09.

Copy for information to:-

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

Order issued on 12/03/2021

Order Dispatched on 12/03/2021