

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

AT-KARACHI

DOUBLE BENCH

APPEAL NO. AT-07/2021

M/s Progressive Traders (Pvt.) Ltd.
KarachiAppellant

Versus

Assistant Commissioner (Unit-30),
RB, KarachiRespondent

Date of Filing of Appeal: 28.01.2021.

Date of hearing: 15.02.2021.

Date of Order: 18.02.2021.

Mr. Muhammad Rehan Qureshi Manager Tax and Finance, for Appellant

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.102/2020 dated 12.11.2020 passed by the Commissioner (Appeals) in Appeal NO. 209/2016 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 284/2016 dated 09.06.2016 passed by Ms. Rafia Urooj, Assistant Commissioner, (Unit-11) SRB Karachi.

02. The brief facts as stated in OIA were that the appellant was operating in Sindh province and was providing or rendering taxable services in respect of "indenters" classified under Tariff Heading 9819.1200 (Indenters) of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the "Act) and was chargeable to Sindh Sales Tax (SST) at the applicable statutory rate with effect from 1st July, 2015.

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03. It was alleged in the OIO that initially the appellant was served with enrollment notice dated 22nd October, 2015 and was further reminded on 30.10.2015 to get enrolled with SRB, but no response was received. Therefore, the appellant was issued a Show-Cause Notice (SCN) dated 06.05.2016 to explain as to why it should not be registered compulsorily under section 24B of the Act and why penalty as provided at Serial No. 1 of Table under section 43 of the Act should not be imposed for the violation of section 24 of the Act. It was stated in the OIO that after service of SCN despite obtaining extension of time on several occasions and availing various opportunities the appellant had not filed any response to the SCN. Thus an exparte OIO was passed and the AC also imposed penalty of Rs.110,000/= under serial No. 1 of Table under section 43 of the Act for violating the provision of section 24 of the Act.

04. The appellant had challenged the said OIO before Commissioner (Appeals) by way of filing of appeal who upheld the compulsory registration of the appellant and remitted the penalty imposed by the AC. Hence, this appeal.

05. The learned representative of the appellant Mr. Muhammad Rehan Qureshi, submitted that all the principals of the appellant were foreign entities having no office or place of business in Sindh. Thus the appellant was not subjected to laws of Sindh as provided under Section 2(51A) of the Act.

06. He further submitted that SST was levied in VAT mode and the burden of tax was to be passed on to the recipient of service or to an end consumer. However under law the service provider was not liable to take upon itself the burden of payment of SST and was only liable to charge SST and on receipt of SST from the recipient to deposit the same with SRB. In the instant case since the service recipient was stationed abroad and was not subjected to Pakistani laws the burden of SST could not be passed on. He further contented that the indenters were neither a broker nor a commission agent and the Job of indenter was to represent its principal in promotion of goods. The representative alternatively submitted that even if indenting was treated as a service it was export of service which was a



subject falling within the domain of Federation and Province could not legislate thereon. He further contended that the appellant received all remittance in foreign currency through State Bank/banking channel and in case government of Sindh insisted upon levying SST the indenters would stop bringing the foreign exchange in the country and that this tax is hurting the Pakistan foreign exchange earnings by the indenters

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

07. The main contention of the learned representative for the appellant was that indenting was not a service thus the same was not covered under the Act. His further contention was that even if indenting was treated as a service it taxing authority vested with the Federation and not with Province of Sindh. To resolve this controversy it appears necessary to examine the definitions of the "indenter", "taxable service" and "service or services" provided under section 2 of the Act wherein indenter was defined in sub-section (51A) of section 2 of the Act as under:-



(51A) Indenter means a person who is representative for a non-resident person or a non-resident company or a foreign product or service and who gets a consideration in the shape of commission, fee, remuneration or royalty on transaction, irrespective of whether the transaction has taken place out of his effort, consent or otherwise".

08. The "taxable service" has been defined under sub-section (96) of section 2 of the Act as under:-

"(96) taxable service: shall have the meaning given under section 3;

The "service or services" has also been defined in sub-section (79) of section 2 of the Act as under:

(79) service or services means anything which is not goods or providing of which is not a supply of goods and shall include but not limited to the services listed in the First Schedule of the Act".

An explanation is attached to sub-section (79) of section 2 of the Act which provides that "Explanation--A service shall and continue to be treated

as service regardless whether or not providing thereof involves any use, supply or consumption of any goods either as an essential aspect of such providing of service". The purpose of explanation was to facilitate proper understanding of a provision of law and to serve as guide line and not to enlarge the meaning of provision of law.

09. According to Section 3 of the Act the taxable service is a service listed in the Second Schedule of the Act, which is provided by a registered person from its registered office or place of business in Sindh. The Tariff Heading 9819.1200 (Indenters) is the part of Second Schedule of the Act since July-2015.

10. Economic activity is also defined in Section 4 of the Act and provides that "*an economic activity means an activity carried on by a person that involves or is intended to involve the provision of service to another person.*" It is apparent that the appellant was providing services to its foreign based clients against consideration received through banking channel.

Considering the above definition of an "indenter" it appears that indenter is the representative for the non-resident person or company or a foreign product. The job of indenter is to represent its clients and products within the territory in which it functions. The definition is exhaustive to cover the services provided or rendered by appellant as indenter.

12. Collective reading of the above quoted provisions of sub-section (51A), (96), (79) of section 2, 3 and 4 of Act read with Tariff Heading 9819.1200 of the Second Schedule to the Act clarify that the services provided or rendered by the indenter are taxable services according to the Act.


13. The appellant was compulsorily registered under section 24B read with section 24 of the Act, which provides that registration will 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. Section 24B of the Act provides that if a person is required to be registered under the Act and that person has not applied

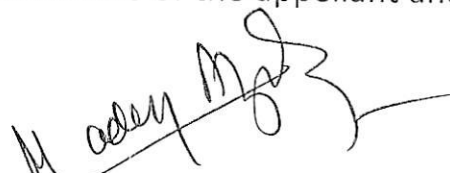
for registration, the officer of the SRB shall, after such enquiry as he may deem fit, register the person through an order to be issued in writing and such person shall be deemed to have been registered from the date he became liable to registration. The appellant is a resident person and is providing or rendering taxable service of indenter from its office located in Sindh and since the appellant failed to get registration before providing or rendering taxable services it was rightly registered compulsorily under section 24B of the Act.

14. The learned Commissioner (Appeals) also dealt with the contention raised by the learned advocate for the appellant in OIA. In our view the findings of Commissioner (Appeals) do not suffer from any illegality and infirmity and the conclusion has been rightly drawn. The Assessing officer has imposed penalty of Rs.110,000/= under Serial No.1 of Table of Section 43 of the Act for non-registration which was rightly remitted by Commissioner (Appeals).

15. In view of the above discussions the order in original and order in appeal are upheld to the extent of compulsory registration of appellant under section 24B of the Act and consequently the appeal is dismissed in limine.

16. The appeal is disposed of in above terms. The copy of this order may be provided to the authorized representative of the appellant and to the concerned AC.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Certified to be True Copy

Karachi: Dated: 18.02.2021.

Copy for compliance:

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

Copy for information to:-

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


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

10/03/2021

Order Dispatched on

10/03/2021

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Registrar