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BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI

DB-I

APPEAL NO. AT-39/2022

M/s Dubai Islamic Bank Limited,
(SNTN: S2395184-2)
3rd Floor, Hassan Chambers, DC-7,
Block-7, Clifton, Karachi.....Appellant

Versus

The Assistant Commissioner (Unit-09),
Sindh Revenue Board (SRB),
02nd Floor ShaheenComplex,
M.R. Kiyani Road, Karachi.Respondent

APPEAL NO. AT-40/2022

M/s Dubai Islamic Bank Limited,
(SNTN: S2395184-2)
3rd Floor, Hassan Chambers, DC-7,
Block-7, Clifton, Karachi.....Appellant

Versus

The Assistant Commissioner (Unit-09),
Sindh Revenue Board (SRB),
02nd Floor ShaheenComplex,
M.R. Kiyani Road, Karachi

Date of filing of Appeal 29.04.2022

Date of hearing 30.08.2022

Date of Order 13.10.2022

Mr. Saud-ul-Hassan, Advocate and Mr. Muhammad Wajahat, ACA for
appellant.

Ms. Sania Anwar, DC-SRB and Mr. Imran Ali, AC-SRB, for respondent.

ORDER

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Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 45/2022 dated 18.04.2022 and 44/2022 passed by the Commissioner (Appeals), SRB in Appeal No. 39/2020 and 403/2019 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 19/2020 dated 17.02.2020 and 761/2019 dated 14.11.2019 passed by Mr. Abdul Majeed, Assistant Commissioner, (Unit-09) SRB Karachi.

02. The facts in both the cases are similar to each other, and in both appeals the SST was levied on bancassurance and home remittance initiative under Pakistan Remittance Initiative Scheme. The tax periods involved in Appeal No. 39/2022 were from January-2016 to December-2016 and in Appeal No. AT-40/2022 the tax periods were from January-2015 to December-2015. The facts were taken from Appeal No. AT-39/2022.

03. The facts as stated in the OIO were that the appellant was engaged in providing and rendering taxable services classified under Tariff Heading 9813.4000 ("Services provided or rendered by banking companies") of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) in relation to sub-headings thereof read with main Tariff Heading 98.13 of the Second Schedule to the Act, which was chargeable to Sindh Sales Tax (SST) within the meaning of section 3 & 8 of the Act read with rules 3, 4, 5, 6 and 30 of the Sindh Sales Tax on Services Rules, 2011 (the Rules).

04. It was alleged in the OIO that the scrutiny of the monthly SST returns filed by the appellant with SRB viz-a-viz reconciliation with financial statements for the tax periods from January-2015 to December-2015 the discrepancy of value of the services short declared and short payment of Sindh Sales Tax was found. The details are as under:-

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Description	Jan to Jun-2015	July to Dec 2015	Total
Fee, Commission and Brokerage	624,875,500	624,875,500	1,249,751,000
Other Income	42,000	42,000	84,000
Less: Value of Service declared in FBR	(6,277,783)	(11,129,143)	(17,406,926)
Less: Value of Service declared in SRB	(350,959,532)	(604,309,957)	(956,269,489)
Value of Services short declared	267,680,185	8,478,400	276,158,585
Applicable Tax Rate	15%	14%	-
Tax Short Paid	40,152,028	1,186,976	41,339,004

05. The appellant was served with Show-Cause Notice (SCN) dated 12th March, 2019 to explain as to why the SST liability of Rs.41,339,004/-, as worked out above should not be assessed and recovered under the provisions of Section 23(1) and Section 47(1A) of the Act along with default surcharge under Section 44 of the Act. The appellant was also called upon to explain as to why penalties should not be imposed under Serial No. 2 and 3 of the Table under section 43 of the Act for contravention of various provisions of the Act and the Rules.

06. In response to the SCN the authorized representative filed written reply dated 05.04.2019 and 20.05.2019 respectively. The pleas raised by the appellant were that i) it had provided services all over Pakistan including exempt services ii) the State Bank of Pakistan (SBP) has directed the appellant not to charge any amount on account of Home Remittance (HR) and that the SBP would reimburse the same, thus the rebate received from SBP in shape of reimbursement were not taxable iii) the commission earned in respect of bancassurance were not taxable.

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07. The Assessing Officer (OA) passed OIO determining the SST of Rs.11,589,445/- under section 23(1) read with Section 47(1A) of the Act along-with the default surcharge under section 44 of the Act. The AO also imposed penalty of Rs.120,000/= under Serial No. 2 of the Table under section 43 of the Act, penalty of Rs. 579,472/= under Serial No. 3 of the Table under section 43 of the Act. The appellant was also directed to revise the monthly sales tax return for the month of March, 2015 and file a true and correct Sindh Sales Tax return for the same within one month of the decision.

08. The appellant challenged the said OIO by way of filing of appeal under section 57 (1) of the Act before Commissioner (Appeals), SRB disposed of the appeal holding as under:-

"17. I have also gone through the Judgments of the Hon'ble Appellate Tribunal in the matters of M/s Muslim Commercial Bank. The Judgment in the matter of Muslim Commercial Bank is in favor of the department. However, with due deference and utmost respect to what has been held in the other judgments, the Hon'ble Tribunal was not assisted holistically, in the facts and circumstances, the nature of services, as is described in the preceding paras and also on the true and adoptable findings reached by the Hon'ble Supreme Court, which Judgment also discussed the Judgment of the Hon'ble Sindh High Court in the matter of M/s Citi Bank NA, reported in 2014 PTD 284 (abundantly relied upon by the banks for the present purpose). With utmost respect and due deference, the ratio of the Judgment of the Hon'ble Sindh High Court passed in the matter of M/s J.S Bank Limited in Petition No.D-4420/2013 and the ratio of the Supreme Court Judgment discussed above, fully applied onto this case. And with profound respect and due deference, instead the Hon'ble Tribunal has applied those judgments otherwise, due to lack of assistance as to nature of services in this regard in absence of application of the doctrine of "ejusdem generis". The services as is discussed above, when read "ejusdem generis" to the services listed in the group under tariff heading 9813.4000, squarely fall in the then sub-tariff heading 9813.4990/4900 as are discussed above, which element was never discussed in all the sets of appeals carried, on these issues.



18. In view of the given reasons hereinabove, I hold that the OIO is well speaking to this extent. However, as far as the penalties are concerned, it appears to me that the OIO does not discuss that whether the malafides existed on part of the Appellant or otherwise. The matter is such that it involved the interpretation in the circumstances when some of the Hon'ble Tribunal's Judgments were in favor of the Appellate and some of them in favor of the department. So therefore, the non-payment as such does not amount as willful and or bases on malafides'. In view of such findings the OIO is hereby upheld to the extent of principle amount of tax and the default surcharge. Whereas the OIO is set aside to the extent of penalties imposed and the Appellant is thus hereby discharged from the same. The Appellant is directed to pay the amount of tax established hereinabove, along-with the default surcharge to be calculated at the time of payment. In the event of failure of the Appellant to pay the principal amount of tax and the default surcharge within a period of 30 days, it shall be presumed that the delay in payment is willful and thus the penalty of Offence No. 3 of Section 43 of the Act, 2011, as is mentioned at para 2 above, shall be payable".

Resultantly the instant appeal was filed by the appellant.

09. The learned representative of the appellant submitted as under:-

- i) The SST was charged on Bancassurance and Pakistan Remittance Initiative of State Bank of Pakistan during tax periods from January-2016 to December-2016 (in appeal No. AT- 39/2022) and tax periods from January-2015 to December-2015 (in appeal No. AT- 40/2022) and both these points were already decided by the Honorable High Court of Sindh in Citibank Case (2014 PTD, 284) and this Tribunal relying upon the said judgment of Citibank held that no SST was payable on Bancassurance (BA) and Home Remittance Initiative (HRI) and referred to the various orders of the Tribunal i.e. MCB Limited, AT-20/2017 order dated 16.03.2018 (DB-II) (relating to HRI/PRI). He further submitted that the issue of Bancassurance was also decided by the Tribunal in the case of M/s MCB



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Limited, M/s Summit Bank Limited, M/s Burj Bank Limited and M/s Allied Bank Limited.

- ii) The services relating to foreign exchange were provided in foreign countries and thus initiative was given by SBP to bring the foreign exchange in the country through banking channel.
- iii) In providing BA service the role of bank was that of an insurance agent and such services was taxed effective from July, 2019 and since then the appellant was paying SST.
- iv) The Appellant introduces its customers to the Takaful Companies and such activities are regulated by SECP through Bancassurance Regulations, 2015 (BAR, 2015) (earlier Guideline for Bancassurance 2010). Aforesaid regulations clearly states that Bank acts as a corporate insurance agent in BA activity (refer basis of contract provided in Rule 3 of Bancassurance Regulations, 2015).
- v) The Services of insurance agent was listed in First Schedule to the Act and such services was brought into Second Schedule (9855.0000) to the Act vide the Sindh Finance Act 2019. It is contended that banca-takaful (i.e. insurance agency service) was not taxable before July 2019. The Appellant is duly paying SST on banca-takaful under Tariff Heading 9855.000 of the Second Schedule to the Act after July 2019.

The learned Commissioner (Appeals), SRB (CASRB) has wrongly interpreted the judgment of Supreme Court of Pakistan (SCVP) in PTV case. Paragraph 13 of the SCP judgment clearly states that 9812.9090 follows 9812.9000 in hierarchy therefore, it is a sub-category of 9813.9000. Accordingly, SCP held that the sub-heading "Others" having tariff code 9812.9090 is to be read ejusdem generis with the preceding entries in the group i.e. 9812.9000.

- vii) The Tariff heading 9813.4990 is sub-heading of 9813.4900 (i.e. safe deposit locker) therefore, it is to be read ejusdem generis with the safe deposit Tariff Heading 9813.4900 rather than



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9813.4000 i.e. all banking service. The Appellate Tribunal, SRB (AT-SRB) in case of Habib Metropolitan Bank (AT-99/2018) has held that it cannot be accepted that all services of the banking companies are covered in Tariff Heading 98.13 otherwise it would be against the spirit of specific listing of taxable services in Second Schedule to the Act.

10. The learned DC-SRB submitted as under:-

- i) The SST on BA and rebate received from SBP on account of HRI were rightly charged in accordance with the Tariff Heading 9813.4000, (services provided or rendered by banking companies in relation to).
- ii) All the orders of the Tribunal referred by the representative of the appellant of the Tribunal were challenged before the Honorable High Court of Sindh in referential jurisdiction. On a question from the Tribunal the DC submitted that she was not aware whether any stay was granted in such cases or not.
- iii) The DC submitted that she has filed Written Comments to the appeal and will rely upon those comments which may be treated as her arguments and submitted that the BA was taxed under the old Tariff Heading 9813.4990 (altered on 5th July, 2019 and renumbered as 9813.4900) on the principal of ejusdem generis.
- iv) The HRI is an Incentive Scheme by SBP to promote home remittances through banking channel and since the appellant is receiving consideration for providing such services, irrespective of the fact that from whom such charges were received the appellant/services provider was bound to pay SST to SRB.
- v) The AC relied upon all judgments and orders referred by Commissioner (Appeals), SRB in the OIA.
- vi) The banks were not paying SST as Insurance Agent but in confirmatory of re-arranged Tariff Heading 9813.4900.



- vii) In the decision of the CITI Bank, the Honorable High Court has observed on the basis of available facts that "insurance commission" was not mentioned specifically under entry 8 of the First Schedule to Federal Excise Act, 2005 and determined that was not taxable without considering the actual business module of bancassurance services, in which the services provided or rendered by the banking companies to insurance company were taxable.
- viii) The Bank/appellant was engaged in bancassurance services under the guidelines, 2010 of Securities & Exchange Commission of Pakistan issued vide circular No.5/2010.
- ix) The BA services were taxable under the Tariff Heading 9813.4000 read with Tariff Heading 9813.4990 of the Second Schedule to the Act. Reliance was placed upon the Appellate Tribunal, SRB decision in the case of M/s. Zarai Taraqiati Bank Limited dated 16-01-2016 in which the other services were considered as taxable under the Tariff Heading 9813.4990 of the Second Schedule to the Act. Reliance was also placed upon other judgments of the Appellate Tribunal, SRB in the cases in AT-66/2017 dated 07-02-2018 (M/s Habib Bank Ltd v/s AC SRB) & AT-51/2017 dated 09-02-2018 (M/s Standard Chartered Bank Pakistan Ltd v/s AC SRB), wherein the bancassurance service was taxed accordingly. Also reliance was placed upon the judgment of Honorable Supreme Court in the case of Federation of Pakistan v/s Haji Muhammad Sadiq reported in 2007 PTD 67, wherein the concept of "service" & "services" was discussed.
- x) As regards the matter that, there was no specific Tariff Heading mentioned in the SCN or OIO, it was submitted that the banking companies are defined under Section 2(28) of the Act read with Section 7 of the Banking Companies Ordinance 1962 in which the form of business of banking companies are defined. Accordingly, section 3 of the Act provides the



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definition of taxable services provided or rendered by the registered person read with the definition of service & services mentioned under Section 2(79) of the Act. The combined interpretation of the definitions shall be read with the main Tariff Heading 98.13 which provides the description of services provided or rendered by the banking companies & others. The interpretation of main Tariff Heading 98.13 leads the sub-Tariff Heading 9813.4000 and also other relevant sub-sub-Tariff Headings thereof. Furthermore, it would be appropriate to highlight that the registered person is registered with SRB under the Tariff Heading 9813.4000 (Services provided or rendered by banking companies in relation to---all relevant entries of banking companies mentioned under Second Schedule). Accordingly, the registration under Tariff Heading 9813.4000 of the Second Schedule to the Act leads & applied to all the relevant sub-Tariff Headings of banking companies as mentioned under the Second Schedule to the Act. Therefore, factually the description of services provided or rendered by banking companies as already mentioned under the SCN or OIO shall be interpreted with the description of main Tariff Heading 98.13 read with the description of Tariff Heading 9813.4000 and sub-headings thereof and applied accordingly.

11. We have heard the learned representatives of the parties, perused their written submissions and the record made available before us.

12. The SST was levied on BA and HRI purportedly under Tariff Heading 9813.4990 (other services not specified elsewhere) of the Second Schedule to the Act. In the SCN and OIO the said Tariff Heading 9813.4990 was not mentioned and the SCN was issued and OIO was passed invoking Tariff Heading 9813.4000 (services provided or rendered by banking companies in relation to). The Commissioner (Appeals) first time invoked the said Tariff Heading 9813.4990 in the OIA. It was clear that while issuing the SCN the AC was not sure about the relevant Tariff Heading as such he only invoked



Tariff Heading 9813.4000. The Tariff Heading 9813.4000 does not specify the specific services but only describe the service provided or rendered by banks in relation to the service listed under the said Tariff heading.

13. The issue of charging SST on BA and HRI was first decided by the Honorable High Court in the case of Citibank 2014 PTD 284. Relying upon the said judgment in the case of Citibank this Tribunal in its various decisions held that the BA and HRI were not taxable services. In our earlier decision dated 07.05.2021 in the case of Burj Bank Limited, AT-A No. 10/2021 dated 07.05.2021. It was held as under:-

"13. The SCN was issued invoking Tariff Heading 9813.4000 (services provided or rendered by banking companies in relation to). No relevant sub-heading or sub-sub-heading was however specified. The SCN was also silent regarding the bancassurance service provided or rendered by the appellant and in the SCN the SST was demanded on "Fee Commission Brokerage". The OIO was passed invoking Tariff Heading 8913.4000 read with sub-headings thereof and also read with main Tariff Heading 98.13 of the Second Schedule to the Act. Initially the SST of Rs.42,746,518/= was demanded from the appellant without specifying the bancassurance service and the relevant Tariff Heading. The bancassurance service was first time mentioned in para 7 of the OIO under heading "Judgment". However initially in para 2 of the SCN and OIO as mentioned above the SST was demanded on "FEE Commission Brokerage" and the value of service was mentioned at Rs.104,544,000/= involving SST of Rs. 16,727,840/=.

*14. Apparently the SCN was issued in undue haste without due diligence and without collecting proper documents/material. The SCN and OIO were silent about the alleged bancassurance service provided or rendered by the appellant. In absence of raising this ground/allegation in the SCN the same could not be adjudicated in the OIO. It is now well established point of law that the ground not mentioned in the SCN could not be adjudicated while passing such order. In the reported case of Collector Central Excise and Land Customs versus Raham Din, 1987 SCMR 1840 it was held as under:-
"Order of adjudication being ultimately based on a ground which was not mentioned in the SCN, was palpably illegal on face of it".*



15. The identical position exists in the instant case since the tax was charged on the alleged service of bancassurance which was not found mentioned in the SCN. Moreover apparently when the SCN was issued to the appellant the AC/AO was not aware about the facts of the case and no material was available before him to allege that the bancassurance service was provided or rendered by the appellant. Due to this reason the SCN was issued alleging that the value of service provided or rendered was Rs.330,024,000/=, resulting in short declared value of service of Rs.267,165,738/= involving short payment of SST of Rs.42,746,518/=. In the words of the Honorable Supreme Court of Pakistan the AC was merely shooting in dark and was making a roving enquiry. The issuance of SCN without any material available with the officers has been deprecated by the superior courts and it has been held that roving enquiries in tax matters were not admissible. In the reported judgment of Assistant Director Intelligence & Investigation, Customs, Karachi versus B. R. Herman, **PLD 1992 SC 485** it was held as under:-

"The authority cannot make a roving inquiry or issue a notice by merely shooting in dark in the hope that it will be able to find out some material out of the same".

16. In another reported judgment of Caretex versus Collector, Sales Tax, 2013 PTD 1536 it was held as under:-

"Show cause notice" was not a casual correspondence or a tool or license to commence roving inquiry into the affairs of the tax payer based on assumption and speculations but was a fundamental document that carried definitive legal and factual position of the department against the tax payer".

17. It may be further mentioned that the AO charged tax on the service of bancassurance which was allegedly provided or rendered by the appellant and such OIO was maintained by the Commissioner (Appeals). It is then apparent that both the OIO and OIA were passed against the various orders of the Tribunal based upon the dictum laid down by the Honorable High Court in the case of Citibank NA versus Commissioner Inland Revenue and



another, which are still holding the field and had not been set aside by the Honorable High Court of Sindh in referential jurisdiction and attained finality under sub-section (8) of section 62 of the Act subject to section 63 of the Act and were binding on the AO as well as Commissioner (Appeals). The contention of the AC that all services provided by the Banking Companies irrespective of Tariff Headings are taxable has no force. This aspect has been considered by the High Court of Sindh in the case of Citibank 2014 PTD 284 as under:-

"18. In our view, when the foregoing points are kept in mind, the primary submission by learned counsel for the Department, namely that it was the description in the principal heading that was operative cannot be accepted. This description was in the following terms:-

"Services provided or rendered by banking companies, insurance companies, cooperative financing societies, modarabas, musharikas, leasing companies, foreign exchange dealers, non-banking financial institutions and other persons dealing in any such services".

It will be seen that this description only listed the persons who were to provide the services enumerated under Heading No.98.13. This would satisfy only the first requirement of the definition in section 2(16a), since banking companies and NBFIs were listed in the description. However, this had nothing to do with the services that were actually liable to duty. 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. Furthermore, this submission runs counter to the structure of the Pakistan Customs Tariff. As is well known, this is based on (and is almost entirely identical with) the Harmonized Commodity Description and Coding System ("HS System"), which has been agreed upon under an international convention and which is regulated by the World Customs Organization. The HS System is of course concerned with goods, and it comprises of 97



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chapters (with one chapter, 77, being left "blank" for possible future use) whether all manner of goods are listed and categorized. The Pakistan Customs Tariff faithfully reproduces and gives effect to this system. In addition, the HS System allows two final chapters (i.e., 98 and 99) to be used for national purposes and Pakistan has utilized Chapter 98 for "services". Even a quick glance shows that Chapter 98 replicates the system of classification adopted for goods under the HS System. Now, the chapters of the HS System are preceded by certain "General Rules for the interpretation of the Harmonized System" ("General Rules"). These rules are incorporated in the Pakistan Customs Tariff and therefore have the force of law. Although the rules are concerned with goods, in our view they may, subject to suitable adaptation, also be used for the purposes of Chapter 98. This is so because of the close correspondence between the classification system under the HS System and that used in Chapter 98. Rule 6 of the General Rules has been understood to mean, inter alia, that in those headings under which sub-headings are to be found, the classification is to be on the basis and in terms of the sub-headings. Applying this rule to Heading No.98.13 leads to the result that it is the sub-headings thereof that are to be applied. This would be in conformity with the HS System, and is therefore, in our view, the correct approach to applying Chapter 98. 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.

18. The attempt by learned AC 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 and is against the specific listing of services. The main Tariff Heading only provide for the service providers who provide or render services mentioned in the sub, or sub-sub-headings. This has nothing to do with the services that were liable to tax.

19. The DB-I of this Tribunal in its earlier order dated 28.08.2017 passed in the case of Allied Bank Limited versus SRB, Appeal No. AT-205/2015 had held as under:-

"19.11. With regard to the commission earned on providing reference or facilitation of insurance companies it was rightly argued by the learned AR that since the appellant is a banking company and incorporated as such it cannot indulge in the insurance business, nor it is an insurance company. Thus the Honorable High Court held that, "in our view therefore "insurance commission" did not cover within the ambit of any of the sub-headings of Heading No.98.13, and hence not liable to excise duty in terms of entry 8."

20. Relying upon our findings in the above case this Tribunal while hearing Appeal No. AT-36/2019, Summit Bank Limited versus AC-SRB, Karachi relied upon the following portion of the Order dated 05.10.2018 rendered in Appeal No. AT-20/2017 (MCB vs. SRB) held as under:-

"...21. As per section 3 of the Act of 2011 a taxable service is service listed in the second schedule to the Act. Admittedly the bancassurance is not a listed service. The contention of the learned AC that all services provided or rendered by the bank are taxable has no force and if the same is accepted the listing of specific services in the second schedule of the Act becomes redundant. If the intention of the legislature is to tax all services provided or rendered by the bank the listing of specific services in second schedule are not necessary and one liner "all services provided or rendered by the bank" is sufficient to tax the services. The above questions was considered by a learned DB of High Court of Sindh in the reported case of Citibank NA versus Commissioner Inland Revenue and another, 2014 PTD 284, Justice Munib Akhtar, as he then was (now elevated to Supreme Court of Pakistan) speaking for the bench held as under:

"...20. The crux of the Tribunal's findings has been emphasized. (The point with regard to Rule 40 was not pressed before us). It is to be noted that the Appellate Tribunal did not identify any specific sub-headings to which "insurance commission" could be related. The key question is



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whether the relevant act, i.e., "facilitating the [applicant's] employees" to obtain insurance was a "non-fund banking services" that came within any of sub-headings of Heading No.98.13? It is clear that the sub-headings specifically in relation to insurance were all subordinate (sub-sub-) headings of a sub-headings (9813.1000) which related only to "an insurer, including a reinsurer". Since the applicant was neither, these headings obviously did not apply in relation to it. None of the other sub-headings were at all applicable to the putative service in question. 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. In our view therefore, "insurance commission" did not come within the ambit of any of the sub-headings of Heading No.98.13 and hence was not liable to excise duty in terms of Entry 8. In the circumstances, it is not necessary for us to consider whether or not this type of transaction was a "non-fund banking service".



The result of the above discussion is that the view expressed by the learned Judicial Member that bancassurance is not a service is

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in consonance with the judgment of Citi Bank supra and is a correct view".

21. Considering the above discussions and relying upon the reported case of Citibank Supra and our earlier Orders we hold that the bancassurance service was not a listed service during the relevant tax periods involved in this appeal.

22. In the original Second Schedule there was no Tariff Heading relating to others. The Tariff Heading 9813.4990 (other services not specified elsewhere) was added to the Second Schedule to the Act vide Sindh Sales Tax on Services (Amendment) Act, 2011 (Sindh Act No. II of 2012). Apparently it was added under Tariff Heading No. 9813.4910 (Safe Vaults). The Tariff Heading 9813.4990 was re-numbered as 9813.4910 (other services not specified elsewhere) vide Sindh Finance Act, 2019 (XII of 2019) effective from 5th July, 2019.

23. It may be pertinent to mention here that during the relevant tax periods the service of insurance agents was not part of Second Schedule to the Act and the Tariff Heading 9855.0000 (insurance agents) was inserted vide Sindh Finance Act, 2019 (XII of 2019) effective from 5th July, 2019. The banks while providing bancassurance service to insurance companies acted as their agents. Since the service of insurance agents was not part of second Schedule of the Act and the other insurance agents were not paying the SST, therefore charging of SST from the banks tantamount to discrimination which is not permissible under Article 25 of the Constitution of Pakistan. Moreover, it is now well settled that what cannot be achieved directly it could not be achieved indirectly. We therefore hold that during the tax periods involved in this appeal the bancassurance service was not part of the Second Schedule to the Act and was therefore not taxable.

14. It is therefore evident from our above decision, that this change in the Tariff Heading from 9813.4990 to 9813.4900 was sufficient to establish that the earlier Tariff Heading 9813 was not an independent Tariff Heading but was subservient to Tariff Heading 9813.4910, safe vaults.



15. The point is whether the SST could be charged on HRI/PRI was discussed in our earlier decision dated 16.05.2022 passed in Appeal No. AT-22/2022, M/s Silk Bank Limited versus Assistant Commissioner, (Unit-11), Sindh Revenue Board, and it was held as under:-

"19. Second point is "Whether the Tariff Heading under which the SST was charged on PRI was applicable in case of appellant or not?" It was explained by the appellant that this head of income constituted home remittance income which was reimbursement of expenses from SBP. The PRI was established in 2009 to facilitate and support faster, cheaper, convenient and efficient flow of home remittance in the country. This activity related to transfer of money through telegraphic mail and electronic mode. The SST on PRI received from SBP could be demanded and charged under Tariff Heading 9813.4600 Transfer of Money, including telegraphic transfer, mail transfer and electronic transfer provided proper SCN was served upon the appellant invoking this Tariff Heading. Similar entry is also available at Entry No.8 of First Schedule of the Federal Excise Act, 2005 and was considered by the Honorable High Court in the case of M/s Citi Bank NA v. Commissioner Inland Revenue, 2014 PTD 284 as under:-

"14....In our view, on the foregoing basis, the amount paid to be banks, could not be regarded as "charges" within the meaning, and for purposes, of Entry No.8."

It was further held in the same para as under:-

.....The reimbursement of expenses by the State Bank in such circumstances could not be regarded as "charges" within the meaning, and for the purposes, of Entry No.8. Accordingly, it follows that although the service of transfer of money was provided by the applicant, it "charged" a nil amount for the same for purposes of Entry No.8, with the result that the amount of excise duty, being an advaloram, came to zero. Nothing therefore was payable by the applicant in respect of this type of transaction".



This Tribunal relying upon the judgment in the case of Citibank supra in its decision dated 16.03.2018 in the case of MCB Limited versus Commissioner (Appeals), AT-20/2017 held as under:-

"7....It further states that performance based scheme has been developed to encourage overseas entities to enhance marketing efforts at origination and Government of Pakistan shall reimburse marketing expenses through State Bank of Pakistan and the said scheme has been subject to certain conditions laid therein. The purpose clearly shows is to encourage remittances through official banking channels. In view of the preceding discussions we not find any reason to treat Home Remittance as a taxable service. the appeal on this issue is allowed".

20. It is pertinent to mention that for charging SST no specific Tariff Heading was available and no specific Tariff Heading was invoked in the SCN for charging SST on such service. In the OIO the SST was charged under Tariff Heading 9813.4000 of Second Schedule to the Act. The Tariff Heading 9813.4990 at the stage of OIA could not be invoked for two reasons viz., firstly that this Tariff Heading was not mentioned in the SCN and could not be invoked while passing OIA, and secondly that the tax periods involved in the instant appeal were from January-2015 to December-2015. The Tariff Heading under which the SST was actually charged were as under:-

9813.4700 Bank guarantee

9813.4800 Bill discounting Commission

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



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from 01.11.2022 and was converted into Act, 2012 effective from 26.01.2012).

21. It is evident from the above narration that during the tax periods involved in this appeal Tariff Heading 9813.4990 was not an independent sub-heading but was a sub-sub-heading of Tariff Heading 9813.4910. The said Tariff Headings were changed vide Sindh Finance Act, 2019 and after change the said sub headings read as under;-

9813.4700: Commission, including bill discounting commission.

9813.4800: Safe deposit lockers and safe vaults.

9813.4900: Other services not specified elsewhere.

22. In view of change the Tariff Heading 9813.4900 was converted to sub-heading under the main Tariff Heading 98.13. The amendment is curative in nature and the legislature having realized the mistake 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 thus appears from this description that all services provided by banking companies are not covered and only those services are covered which fell under the ambit of sub-Tariff Headings or sub-sub-Tariff Headings under the main Tariff Heading. 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, reported as 2014 PTD 284, wherein 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



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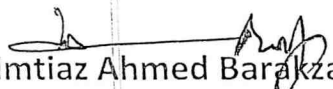
contrary result, is not tenable and cannot, with respect, be accepted”.

In the same judgment it was further held as under:-

“20..... 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...”

16. In view of the above factual and legal position and relying upon our earlier decisions we hold that the SST could not be charged on Bancassurance and Home Remittance Initiative under PRI Scheme under Tariff Heading 9813.4990 of the Second Schedule to the Act as during the relevant tax periods the same was not an independent Tariff Heading and was subservient to Tariff Heading 9813.4910 (safe vaults). Moreover we further hold that SST could also not be charged on PRI in view of judgment of High Court of Sindh in Citibank case as discussed supra.

17. In view of the above discussions and relying upon the reported case of Citibank NA and our earlier orders both these appeals being identical are allowed and the OIO and OIA are setaside. The copy of this order may be provided to the learned representatives of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:-

Dated: 13.10.2022

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- 1) The Appellant through Authorized Representative.
- 2) The Deputy Commissioner, (Unit-15), SRB, for compliance

Copy for information to:-

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

Order issued on

18/10/2022

Registrar

Order Dispatched on

18/10/2022

Registrar