IN THE HIGH COURT OF SINDH, KARACHI

Before: Muhammad Junaid Ghaffar &
Mohammad Abdur Rahman, JJ

Special Sales Tax Reference Application No.68 of 2016

1. For Hearing of Main case
2. For hearing of CMA No.2107 /2016

Summit Capital (Pvt.) Limited
Vs.
Assistant Commissioner (Unit-IV), Sindh Revenue Board

Special Sales Tax Reference Application No.93 of 2016

1. For Hearing of Main case
2. For hearing of CMA No.2636/2016

Assistant Commissioner (Unit-IV), Sindh Revenue Board
Vs.
Summit Capital (Pvt.) Limited

Special Sales Tax Reference Application No.40 of 2018

1. For Hearing of Main case
2. For hearing of CMA No.315/2018

JS Global Capital Limited
Vs.
Commissioner-II, Sindh Revenue Board

Applicant in SSTRA No.68 of 2016, Applicant in SSTRA No. 40 of 2018 and Respondent in SSTRA No.93 of 2016	:	Mr Hyder Ali Khan, Barrister-at-law
Applicant in SSTRA No.93 of 2016 and for Respondents in SSTRA No.68 of 2016	:	Mr. Malik Naeem Iqbal, Advocate
Respondent in SSTRA No.40 of 2018	:	Miss Summiya Kalwar, Advocate
Date of Hearing	:	25 February 2025, 18 March 2025 and 20 May 2025
Date of Judgement	:	4 September 2025

O R D E R

MOHAMMAD ABDUR RAHMAN,J: Through this common order we will be deciding three Special Sales Tax Reference Applications, each maintained under Section 63 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as "Act 2011), bearing:

(i) SSTRA No. 68 of 2016,
(ii) SSTRA No. 93 of 2016, and
(iii) SSTRA No.40 of 2018.

A. SSTRA No. 68 of 2016

2. SSTRA No. 68 of 2016 has been maintained by Summit Capital (Private) Limited (hereinafter referred to as the Applicant in "SSTRA No. 68 of 2016") as against an order dated 6 May 2016 passed by the Appellate Tribunal, Sindh Revenue Board in Appeal No. 115 of 2015, which order partly allowed that appeal and which emanated from Order-in-Appeal No.46 of 2015 dated 13 February 2015 passed by the Commissioner (Appeals) in Appeal No.122 of 2014 confirming Order-in-Original No. 488 of 2015 dated 18 September 2014 passed by the Assistant Commissioner-III, Sindh Revenue Board and which has been preferred by the Applicant on the following question:

> " … a. *Whether the learned ATIR erred in holding that the Applicant's services provided from its office in Lahore to service recipients in Punjab are liable to Sindh Sales Tax on Service?"*

B. SSTRA No. 93 of 2016

3. SSTRA No. 93 of 2016 has been maintained by the Assistant Commissioner (Unit-IV), Sindh Revenue Board as against the order dated 6 May 2016 passed by the Appellate Tribunal, Sindh Revenue Board in Appeal No.115 of 2015 partly allowing the appeal emanating from an Order-in-Appeal No. 46 of 2015 dated 13 February 2015 passed by the Commissioner (Appeals) in Appeal No. 122 of 2014 confirming the Order-In-Original No.488 of 2015 dated 18 September 2014 passed by the Assistant Commissioner-III, Sindh Revenue Board on the following questions:

" … a. *Whether the Tribunal, SRB was justified in not imposing Sindh Sales Tax on the services of Initial Public Offering rendered by the Respondent?*

b. *Whether the Tribunal SRB was justified in setting aside the penalty imposed under section 43(3) and default surcharge under section 44 of Sindh Sales Tax on Services Act, 2011 (Act 2011)?"*

C. SSTRA No. 40 of 2018

4. SSTRA No. 40 of 2018 has been maintained by JS Global Capital Limited (hereinafter referred to as "the Applicant in SSTRA No. 40 of 2018"), against an order dated 29 November 2017, passed by the Appellate Tribunal Sindh Revenue Board disposing of an appeal filed by JS Global bearing Appeal No. AT-63 of 2014 emanating from Order-in-Appeal No. 77 of 2014 dated 6 June 2014 passed by the Commissioner (Appeals) in Appeal No. 20 of 2013 confirming an Order-In-Original No. 192 of 2013 dated 2 September 2013 passed by the Commissioner-III Sindh Revenue Board, Karachi on the following questions;

" … a. *Whether the learned Appellate Tribunal erred in upholding the levy of Sindh Sales Tax on Services on the Appellant's services provided from its branch offices outside of Sindh?*

b. *Whether the Learned Appellate Tribunal erred in upholding the levy of Sindh Sales Tax on Services on the Appellant's services provided from its branch offices outside of Sindh despite the fact that the provision of such services does not involve any economic activity carried out in Sindh and the services are, therefore, not taxable services under Section 3(1) of the Act?*

c. *Whether the learned Appellate Tribunal erred by not recording a finding in respect of the Appellant's objection on the issuance of the SCN under Section 47(1A) of the Act?*

d. *Whether the learned Appellate Tribunal was justified in upholding the imposition of penalty on the Appellant in the absence of any finding of mens rea?*

e. *Whether the Appellate Tribunal gravely erred in upholding the imposition of default surcharge on the Appellant in the absence of any finding of mens rea?*

f. *Whether the learned Appellate Tribunal erred in holding that the Appellant is engaged in the provision of services under Tariff Sub-heading 9813.6000?"*

D. Facts

5. The facts leading up to these Reference Applications are not in dispute. The Applicants in SSTRA No.68 of 2016 and SSTRA No.40 of 2018 are, admittedly, carrying on the business of "stockbrokers" within the meaning given to that expression in Sub-Section (90) of Section 2 of the

Act, 2011 and additionally are also undertaking the business of "foreign exchange brokers."

6. It is contended that being "stockbrokers," the Applicants in SSTRA No. 68 of 2016 and SSTRA No. 40 of 2018, provide a service in respect of facilitating the sale and purchase of shares through their offices in Karachi and in Lahore and on which transactions they earn a commission. The dispute, as maintained by the Sindh Revenue Board, is premised on the manner in which such shares are transferred and which is achieved through an automated system known as the Karachi Automated Trading System (hereinafter referred to as "KATS"). KATS is an electronic system by which stockbrokers, on behalf of their clients, on a portal indicate their demand for purchasing shares and on which portal other stockbrokers, on behalf of their clients, also indicate their willingness to offer shares for sale. Each of there "offers" when matched on the KATS Portal, result in a transaction for the transfer of those shares being consummated.

7. Regarding the KATS Portal and its application to the services provided by the the Applicant in SSTRA No. 68 of 2016 and the Applicant in SSTRA No. 40 of 2018, it is the case of each of them that as the service ***provided*** by them to their clients, in facilitating the transaction for the sale and purchase of the shares, is transacted through their branch office in Lahore, the service is therefore provided by them in Lahore and not in Karachi and as such they are not amenable to pay sales tax on those services in Sindh under the provisions of the Act, 2011. In this regard, they maintain, that the KATS Portal is only used to affect the transfer of the shares and which is provided after the service has already been provided by them to their clients in Lahore, thereby excluding the application of the Act, 2011. Conversely, the SRB has taken the position that the KATS Portal being located at the Karachi Stock Exchange at Karachi, irrelevant as to the location from where the KATS Portal is accessed, the economic activity takes place at Karachi in the Province of Sindh and hence the service provided by the Applicant in SSTRA No. 68 of 2016 and by the Applicant in SSTRA No. 40 of 2018, in effecting the transfer of shares is amenable to sales tax on those services under the Act, 2011. The third protagonist, i.e., the Punjab Revenue Authority, through the Additional Commissioner (HQ), Punjab Revenue Authority has weighed into this issue and has in a letter dated 26 November 2014 opined that Sales Tax on services in respect of "stockbrokers" are charged on *"business activities… and not on the operations of the stock exchange"* so as to justify the imposition of the tax in that Province.

8. In addition, a further demand was made by the SRB that the Appellant in SSTRA 68 of 2016 had earned a commission for facilitating the sale of shares pursuant to an Initial Public Offering and which was chargable under Tariff Heading 9813.8100 of the Second Schedule of the Act, 2011, to Sales Tax.

9. The Appellate Tribunal, SRB has held that:

(a) as the transfer of shares occurred on the KATA portal in the Province of Sindh, irrelevant as to the location as to the office from where the service was provided, the service provided by the "stockbrokers" was amenable to sales tax in the Province of Sindh under Tariff Heading 9819.1000 of the Second Schedule to the Act, 2011; and

(b) no amount was payable by a "stockbroker" under Tariff Heading 9813.8100 of the Second Schedule of the Act, 2011 and as such the demand made in respect of the service provided regarding the acquisition of shares issued through an Initial Public Offering were not amenable to a sales tax on service under the Act, 2011.

10. While the Applicant in SSTRA No.68 of 2016 and the Applicant in SSTRA No.40 of 2018 have questioned the finding of the Appellate Tribunal, SRB that in the aforesaid circumstances a "stockbroker" was amenable to pay sales tax on such services in the Province of Sindh under Tariff Heading 9819.1000 of the Second Schedule to the Act, 2011, the SRB has maintained SSTRA No. 93 of 2016 questioning the finding that no amount was payable by a "stockbroker" under Tariff Heading 9813.8100 of the Second Schedule of the Act, 2011.

E. Arguments on behalf of the Applicants in SSTRA No.68 of 2016 and SSTRA No.40 of 2018

11. Mr. Hyder Ali Khan entered appearance on behalf of the Applicant in SSTRA No.68 of 2016 and SSTRA No.40 of 2018. He contended that Section 3 of the Act, 2011 prescribes what is a "taxable service" and which section, at the relevant time, read as hereinunder:

> *" … (1) A taxable service is a service listed in the Second Schedule to this Act, which is provided:*
>
> *(a) by a registered person from his registered office or place of business in Sindh;*
>
> *(b) in the course of an economic activity, including in the commencement or termination of the activity.*
>
> *Explanation.--This sub-section deals with services provided by registered persons, regardless of whether those services are provided to resident persons or non-resident persons.*
>
> *(2) A service that is not provided by a registered person shall be treated as a taxable service if the service is listed in the Second Schedule to this Act and*
>
> *(a) is provided to a resident person;*
>
> *(b) by a non-resident person in the course of an economic activity, including in the commencement or termination of the activity.*
>
> *Explanation- This sub-section deals with services provided by non-resident persons to resident persons whether or not the said resident person is an end consumer of such services."*

He maintained that Sub-Section (1) and Sub-Section (2) of Section 2 of the Act, 2011 make a distinction as between services provided by persons who are classified as "registered persons" under the Act, 2011 and persons who are classified as not "resident" in the Province of Sindh. He maintained that the former, relating to "taxable services provided by registered persons," are dealt with in Sub-Section (1) of Section 3 of the Act, 2011 and which prescribes that any service, that is listed in the Second Schedule of the Act, 2011 and which is provided by a "registered person" in the course of an "economic activity" from either his "registered office" or from a "place of business in Sindh", shall be classified as a "taxable service." In this regard he maintained that as the service provided by the Applicant in SSTRA No. 68 of 2016 and by the Applicant in SSTRA No. 40 of 2018 was not provided from either their "registered office or from a "place of business in Sindh," neither of them came within the purview of that Section.

12. With regard to Sub-Section (2) of Section 3 of the Act, 2011, Mr. Hyder Ali Khan maintained that the jurisdiction assumed by the Act, 2011, under that section deals with services provided by persons who are not "resident" in Sindh. In this regard he made reference to services that are provided by persons who are not classified as a "registered person" and which services, if so provided, are to be treated as a "taxable service" only if that service is listed in the Second Schedule to the Act, 2011 and is provided in the course of an "economic activity" as defined in Section 4 of the Act, 2011 by a person who is, within the definition given to that

expression in Sub-Section (73) of Section 2 of the Act, 2011 not a “resident” in Sindh to a person who is within that same definition classified as a person who is a resident of Sindh. In this regard he maintained that as the service, that was being provided by the Applicant in SSTRA No. 68 of 2016 and by the Applicant in SSTRA No. 40 of 2018, was being provided to a person who was not a “resident” of Sindh neither of the Applicants came within the purview of that Section as well.

13. While accepting that both Sub-Section (1) and Sub-Section (2) of Section 3 of the Act, 2011 prescribe that the service provided by a person will be treated as a “taxable service” irrelevant as to whether that service was provided by that person at time of the commencement of the economic activity or at the time of termination of the economic activity, Mr. Hyder Ali Khan maintained that the provisions of the economic activity was controlled by the prescriptions of each of those sections and which could not be read disjunctively and which when read conjunctively clearly excluded their application to the services provided by the Applicant in SSTRA No. 68 of 2016 and by the Applicant in SSTRA No. 40 of 2018 to persons who were residents of Punjab.

14. Mr. Malik Naeem Iqbal and Miss Summiya Kalwar entered appearance on behalf of SRB in SSTRA No. 68 of 2016 and SSTRA No. 40 of 2018 respectively and both contended that while the services that were being provided by the Applicant in SSTRA No. 68 of 2016 and by the by the Applicant in SSTRA No. 40 of 2018 were admittedly being provided by them to residents of the Punjab, both Sub-Section (1) and Sub-Section (2) of Section 3 of the Act, 2011 prescribe that in the event that the economic activity either commences or terminates in Sindh, the service provided would be liable to being taxed under the provisions of the Act, 2011. In this regard they emphasised that as the services were being provided through the KATS Portal, the economic activity relating to the transfer of the shares was concluded at Karachi through a portal that were maintained at the Karachi Stock Exchange and which therefore satisfied that requirement. Additionally, while relying on the definition of the expression “place of business in Sindh” as contained in Sub-Section (64) of Section 2 of the Act, 2011, he contended that the expression “or otherwise” as contained in clause (b) of Sub-Section (64) of Section 2 of the Act, 2011 expanded the definition of that expression to the extent that in the event that the service was being provided virtually e.g., through the KATS Portal, then such a service would be considered to have been from the persons “place of business in Sindh” and hence would be amenable to tax under the provisions of the Act, 2011. In this regard he relied on a decision reported

as ***Pakistan Stock Exchange Limited through Duly Authorized Officer vs. Province of Sindh through Secretary, Ministry of Finance and 3 others***[1] wherein it was held that the Pakistan Stock Exchange was amenable to the provisions of the Act, 2011.

F. Arguments on behalf of the Applicants in SSTRA No.93 of 2016

15. In SSTRA 93 of 2016. Mr. Malik Naeem Iqbal entered appearance on behalf of SRB and contended that in their capacity as stockbrokers, the Applicant in SSTRA No. 68 of 2016 had facilitated the acquisition of shares pursuant to an Initial Public Offering and on which an amount was received by the Applicant in SSTRA No. 68 of 2016 from the company issuing the Initial Public Offering and which amounted to a commission and which was amenable to sales tax on service under the provisions of the Act, 2011. In this regard he relied on a decision reported as ***Habib Safe Deposit Vault (Private) Ltd. vs. The Province of Sindh through Secretary Finance and others***[2] in which when considering the expression "other persons" as used in the Tariff Heading 98.13 of the Second Schedule of the Act, 2011, the Supreme Court of Pakistan had held that such an expression was in effect a catch all expression which would include any and all classes of persons who were not otherwise detailed in that heading.

16. Conversely, Mr. Hyder Ali Khan has contended that when there is an Initial Public Offering, applications are made by stockbrokers such as the Applicant in SSTRA No. 68 of 2016 on behalf of various customers for the purchase of shares and for which a fee was paid by it. In the event that the application of the customer was successful the company offering the IPO. to whom that fee had been given. gave a rebate on that amount and which cannot therefore be considered a commission earned for a service provided.

G. Order

17. We have heard Mr. Hyder Ali Khan, Mr. Malik Naeem Iqbal and Miss Summiya Kalwar and have perused the record.

---

[1] 2024 CLD 580
[2] 2016 SCMR 484

a. SSTRA No.68 of 2016 and SSTRA No.40 of 2018

18. These Applications have been maintained by the Applicants each of whom are admittedly "Stockbrokers" and "Foreign Exchange Brokers" stating that as they never provided a "taxable service" from the Province of Sindh or to a person "resident" in the Province of Sindh, they are not amenable to pay a Sales Tax on the Services that were provided by them outside of the Province of Sindh under the provisions of the Act, 2011.

19. To begin with, there is no dispute as between the parties as to whether the service that that was being provided by "stockbrokers" does or does not amount to an "economic activity" as clearly what was provided by the Applicants in SSTRA No.68 of 2016 and by the Applicant in SSTRA No.40 of 2018 i.e., assistance in the purchase and sale of shares, was a service and which came within the definition of the expression "economic activity" as prescribed in Section 4 of the Act, 2011 and hence liable to sales tax on that service under Section 8 of the Act, 2011. There is also no dispute as between the parties that the Applicant in SSTRA No.68 of 2016 and the Applicant in SSTRA No.40 of 2018 are each a "registered person" within the definition given to that expression in in Sub-Section (71) of Section 2 of the Act, 2011 as each of the Applicants concede that services provided by them, to their customers located within the Province of Sindh, are amenable to sales tax on those service. It therefore only needs to be considered as to whether the Applicants in SSTRA No.68 of 2016 and SSTRA No.40 of 2018 come within the purview of Section 3 of the Act, 2011 so as to see whether the service provided by each of them would amount to a "taxable service" as prescribed in that Section and specifically as to whether the service provided by the Applicant in SSTRA No.68 of 2016 and by the Applicant in SSTRA No.40 of 2018 was a "taxable service" in terms of Sub-Section (1) of Section 3 of the Act, 2011 or in terms of Sub-Section (2) read with Sub-Section (3) of Section 3 of the Act, 2011.

20. In terms of clause (a) of Sub-Section (1) of Section 3 of the Act, 2011 while the Applicants in SSTRA No.68 of 2016 and the Applicant in SSTRA No.40 of 2018 have their registered office at Karachi and hence also have a place of business in Sindh, the service that was ***"provided"*** by each of them to their clients was admittedly not "provided" by the Applicant from their "registered office" in Sindh or for that matter from a "place of business in Sindh" and which service was in fact provided by them from their branch office in Lahore. In this context Mr. Malik Naeem Iqbal has drawn the attention of the Court to the definition of the expression "place of business

in Sindh" and which, at the relevant time, was defined in Sub-Section (64) of Section 2 of the Act, 2011 to mean as hereinunder:

> " .. (64) ***"place of business in Sindh"*** *means that a person-*
>
> *(a) owns, rents, shares or in any other manner occupies a space in Sindh from where it carries on an economic activity whether wholly or partially; or*
>
> *(b) carries on an economic activity* ***through any other person*** *such as an agent, associate, franchisee, branch office,* ***or otherwise*** *in Sindh but not including a liaison office.*

Mr. Malik Naeem Iqbal has emphasised that the expression "or otherwise" as used in clause (b) of Sub-Section (64) of Section 2 of the Act, 2011 would be wide enough to include the KATS portal that is used to match offers for the sale and purchase of shares and which he contends would therefore mean that a portion of the economic activity occurred from a "place of business in Sindh" and which service was therefore taxable under the provisions of the Act, 2011. We are however not able to accept such a contention. Clause (b) of Sub-Section (64) of Section 2 of the Act, 2011 prescribes that a person would be carrying out an economic activity from a place of business in Sindh, if they carry out the economic activity *"through any other person"* who is located in Sindh and whereafter examples have been given of the types of person "through" whom such an economic activity can be undertaken. The expression "person" is defined in Sub-Section (63) of Section 2 of the Act, 2011 to mean:

> " … (63) ***"person"*** *means –*
>
> *(a) an individual;*
>
> *(b) a company, an agency or an association of persons incorporated, formed, organized or established in Pakistan or elsewhere;*
>
> *(c) the Federal Government;*
>
> *(d) a Provincial Government;*
>
> *(e) a Local Authority or Local Government in Pakistan; or*
>
> *(f) a foreign Government, a political sub-division of a foreign Government, or a public international organization;*
>
> ***Explanation:*** *The use of the word "he" in this Act shall be taken to refer to any or all of the persons mentioned in sub-clauses (a) to (f) above."*

Considering the definition of the expression person, we cannot see how the use of a portal, located in Sindh comes within the definition of the expression "person" and by which it could be considered that an economic activity has been carried out *"through any other person"* as the "portal" is clearly not a "person" as defined in Sub-Section (63) of Section 2 of the Act, 2011. It would seem that it was for this reason that an amendment was

subsequently made to Sub-Section (64) of Section 2 of the Act, 2011, through the Sindh Finance Act, 2017 and which now reads as hereinunder:

> " … *(64)* ***"place of business in Sindh"*** *means that a person –*
>
> *(a) owns, rents, shares or in any other manner occupies a space in Sindh from where it carries on an economic activity whether wholly or partially; or*
>
> *(b) carries on an economic activity through any other person such as an agent, associate, franchisee, branch, office, or otherwise in Sindh* ***or through virtual presence or a website or a web portal or through any other form of e-Commerce, by whatever name called or treated, but does not include*** *a liaison office.*

Such an amendment being made by the Provincial Assembly in the section is in itself a tacit acceptance by the Provincial Assembly that prior to the promulgation of the Sindh Finance Act, 2017, the virtual access of a portal in Sindh would not have come within the definition of the expression "Place of business in Sindh" so as to bring such an economic activity within the prescriptions of Clause (a) of Sub-Section (1) of Section 3 of the Act, 2011 as otherwise there would have been no need to make such an amendment. That being the case and the prescriptions of Clause (a) of Sub-Section (1) of Section 3 of the Act, 2011 having not been met so as to make the service provided a "taxable service" for the purpose of that Section, we are clear that the economic activity carried out by the Applicants in SSTRA No.68 of 2016 and the Applicant in SSTRA No.40 of 2018 are not a taxable service in that context.

21. Turning our attention to Clause (b) of Sub-Section (1) of Section 3 of the Act, 2011 the first question that needs to be considered is as to whether clause (a) and (b) of Sub-Section (1) of Section 3 of the Act, 2011 have to read conjunctively or disjunctively. The manner in which each of those two clauses are separated into two separate clauses would generally tend to lead one to consider that each of those clauses were to be read disjunctively. However, when one attempts to read clause (a) and clause (b) of Sub-Section (1) of Section 3 of the Act, 2011 disjunctively, it immediately becomes apparent that such an interpretation would lead to a conclusion that in terms of clause (b) of Sub-Section (1) of Section 3 of the Act, 2011 there was no person prescribed by that clause who is to be considered as having provided the service envisaged in Sub-Section (1) of Section 3 and which would therefore not render any person liable for the provision of the "taxable service" and thereby leading to a redundancy being attributed to that Sub-Section. It is quite well settled that when interpreting a statute an interpretation leading to redundancy is to be

avoided,[3] and that having been said, we are of the opinion that the provisions of clause (a) and (b) of Sub-Section (1) of Section 3 of the Act, 2011 have to be read conjunctively and as the economic activity provided by each of the Applicant in SSTRA No.68 of 2016 and the Applicant in SSTRA No.40 of 2018 were neither provided from their "registered office" in Sindh or from their "place of business in Sindh" we cannot see how that "economic activity" can be treated as a taxable service under Sub-Section (1) of Section 3 of the Act, 2011.

22. With regard to Sub-Section (2) of Section 3 of the Act, 2011, it is immediately apparent that the Section is unhappily worded as by stipulating that, if the prescriptions of Clause (a) and (b) of Sub-Section (2) of Section 3 of the Act, 2011 are met, when a "service is **not** provided by a registered person" such a service should be treated as a "taxable service," would seem to indicate that "not providing a service" would amount to a "taxable service" and which would be illogical for the purposes of the levy of the tax. To our mind the intention of Section 3 of the Act, 2011 is to create a distinction as between services that are provided by a "registered person," as clarified in Sub-Section (1) of Section 3 of the Act, 2011, with services that are provided by a person who is "not registered" and whose liability to pay a sales tax on a service is determined by the prescriptions of Sub-Section (2) of Section 3 of the Act, 2011. In this context, the first thing to consider is that the service that is being provided by the Applicant in SSTRA No.68 of 2016 and by the Applicant in SSTRA No.40 of 2018 are being provided by persons each of which are registered persons and both of whom are therefore prima facie excluded from purview of this Section. However, Sub-Section (3) of Section 3 of the Act, 2011 prescribes as hereinunder:

> *" … (3) For the purposes of sub-section (2), where a person has a registered office or place of business in Sindh and another outside Sindh, the registered office or place of business in Sindh and that outside Sindh shall be treated as separate legal persons."*

This section reads as a deeming clause and states that where a person has offices in more than one location, their offices outside of the Province of

---

[3] See ***Commissioner of Income Tax Lahore vs. Ferozedin Allah Rakha M. Ramzan*** PLD 190 Supreme Court 115; ***Muhammad Deen Malik vs. Second Additional District Judge, Karachi*** 1982 SCMR 1223; ***Ihsan-ur-Rehman vs. Najma Parveen*** PLD 196 Supreme Court 14; ***Cooperative Insurance Society of Pakistan Limited, Karachi vs. State Life Insurance Corporation of Pakistan***, Karachi 1999 SCMR 2779; ***Collector of Sales Tax and Central Excise (Enforcement) and another vs. Mega Tech (Pvt.) Ltd*** 2005 SCMR 1166; ***Messrs Master Foam Ppvt.) Ltd. vs Government of Pakistan*** PLD 2005 Supreme Court 373; ***Collector of Sales Tax and Central Excise (Enforcement) vs. Messrs Mega Tech (Pvt.) Ltd.*** 2005 PTD 1933; ***Aftab Shahban Mirani vs. Muhammad Ibrahim*** PLD 2008 Supreme Court 779; ***Dr. Raja Aamer Zaman vs. Omar Ayub Khan*** 2015 SCMR 1303; ***Pakistan Telecommunication Employees Trust vs. Federation of Pakistan*** PLD 2017 Supreme Court 718; ***Pakistan Television Corporation Limited vs. Commissioner Inland Revenue (Legal) LTU, Islamabad*** 2017 SCMR 1136; ***Searle IV Solution (Pvt.) Ltd vs. Federation of Pakistan*** 2018 SCMR 1444; ***Haji Tooti vs. Federal Board of Revenue, Islamabad*** 2023 SCMR 1980

Sindh would be treated as a “separate legal person” for the purposes of determining whether the service provided by that person is or is not a “taxable service” within the prescriptions of Sub-Section (2) of Section 3 of the Act, 2011. It would therefore follow that the “branch offices” of each of the Applicants in SSTRA No.68 of 2016 and SSTRA No.40 of 2018 are to be treated as “separate legal persons” and would therefore have to be registered separately under the Act, 2011 and which having not been done would lead to a conclusion that the services being provided by each of their branch offices were being provided by a person who was not a registered person and who would therefore, to that extent, come within the purview of Sub-Section (2) of Section 3 of the Act, 2011. However, in terms of clause (a) of Sub-Section (2) of Section 3 of the Act, 2011, for the service to be considered a “taxable service,” that service would have to be provided to a “resident” person within the meaning given to that expression in Sub-Section (73) of Section 2 o the Act, 2011 and which is admittedly not the case as the service that was provided by the Branch Office of each of the Applicants in SSTRA No.68 of 2016 and SSTRA No.40 of 2018 were provided to persons who were admittedly residents of Lahore and not residents of Karachi thereby excluding the purview of that economic activity from being considered as a taxable service under Sub-Section (2) of Section 3 of the Act, 2011. That being the case, the Applicants in SSTRA No.68 of 2016 and SSTRA No.40 of 2018 and each of them are therefore not liable to pay sales tax on services to the SRB under the provisions of the Act, 2011. These two Applications must therefore be allowed.

b. SSTRA No. 93 of 2016

23. The SRB have maintained this Application taking exception to the order passed by the Appellate Tribunal, SRB contending that a payment that was received by the Applicant in SSTRA No.68 of 2016 was commission received for offering to purchase shares pursuant to an Initial Public Offering and which were therefore amenable to sales tax on that service under Tariff Heading 9813.8100 of the Second Schedule of the Act, 2011. The Appellate Tribunal, SRB has rejected the contentions of the SRB maintaining that the Main Tariff Heading as indicated in 98.13 of the Second Schedule of the Act, 2011 did not include the services provided by the Applicant and hence the Sub-Tariff Heading bearing 9813.8100 could not be expanded beyond the scope of the Main Tariff heading.

24. The Applicant in SSTRA No.68 of 2016 is admittedly a private limited company carrying on the business of a "stockbroker" and a "foreign exchange broker". Tarif Heading 98.13 of the Second Schedule of the Act, 2011 reads as hereinunder:

" …

Tariff Heading	*Description*	*Rate of Tax*
98.13	*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****. …*	*13%*
9813.8000	*Service provided as banker to an issue*	*13%*
9813.8100	***Others****, including the services provided or rendered by non-banking finance companies, modaraba and musharika companies and other financial institutions"*	*13%*

The manner in which these provisions are to be interpreted have been considered by a Division Bench of this Court in the decision reported as ***Citibank NA vs. Commissioner Inland Revenue***[4] wherein while considering the provisions of an entry in the Pakistan Customs Tariff in respect of "Non-Fund Banking Services" and where the department were relying on the description in the main heading to impose a levy, it was held that:

> " ... *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 others persons dealing in any such services."*

[4] 2014 PTD 284

> *It will be seen that this description only listed the person who were to provide the services enumerated under Heading 98.13. This would satisfy only the first requirement of the definition in Section 2 (16a), since banking companies and NBFI's 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 list 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 identical to 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 chapters (with one chapter, 77, being left "blank" for possible future use) wherein 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. …"*

The order passed by the Division Bench of this Court in ***Citibank NA vs. Commissioner Inland Revenue***[5] in this respect have been approved by the Supreme Court of Pakistan in the decision reported as ***Messrs Pakistan Television Corporation Limited vs. Commissioner Inland Revenue (Legal) LTU, Islamabad and others.***[6] While the rules of interpretation, clarified in these judgements, refers to the "Harmonized Commodity Description and Coding System" as applicable to the interpretation of the Custom Tariffs under the Customs Act, 1969 and which was made applicable to a similar "Description and Coding System" that was used in the Federal Excise Act, 2005, we note that a similar "Description and Coding System" has also been adopted into the Second Schedule of the Act, 2011 when determining the tariffs for Sales Tax on Services in the Province of Sindh and we are clear that the same rules of interpretation should therefore be adopted when interpreting the Tariff heads as indicated in the Second Schedule of the Act, 2011.

---

[5] 2014 PTD 284

[6] 2019 PTD 484

25. The relevant rules of interpretation read as hereinunder:

> *" … **GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM***
>
> *Classification of goods in the Nomenclature shall be governed by the following principles:*
>
> *1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions : …*
>
> *6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires."*

Rule 1 prescribes that the titles of sections, chapters and sub-chapters are for ease of reference only and for ***legal*** purposes reliance should, subject to certain provisos, instead be placed on headings and any relative section or chapter notes. Rules 6 further elaborates that so as to determine the classification of the "service" in the sub-headings of a heading it is necessary to examine the terms of those sub-headings and notes. Now if one is to see Tariff Heading 98-13, it relates to the Chapter of "*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**."* To our mind, the Applicant being a "stockbroker" and a "foreign exchange broker" does not come within the definition of any of the services as indicated in Chapter 98-13 nor is it a person *"dealing in any such services*" so as to bring it within the purview of that Tariff Hearing. Additionally, to our mind it also does not come within Heading 9813.8000 as it is admittedly not a "banker to an issue" and also cannot fall within the definition of the expression "others" as contained in Sub-Heading 9813.8100, which having to be read in the context of Heading 9813.8000 must be read as other persons who are acting as "bankers to an issue." The economic activity that was being offered by the Applicants in SSTRA No. 68 of 2016 was certainly not to act as "banker to an issue" and hence the activity undertaken did not fall with the perimeters of this Tariff Heading either. This Application must therefore be dismissed.

c. <u>Answer to Questions in SSTRA No.68 of 2016, SSTRA No. 93 of 2016 and SSTRA No.40 of 2018</u>

26. For the foregoing reasons, each of the questions are answered as hereinunder:

(i) question (a) in SSTRA No. 68 of 2016 is answered in the positive in favour of the taxpayer and against the Department;

(ii) question (a) and question (b) in SSTRA No. 93 of 2016 are both answered in the positive in favour of the taxpayer and against the Department;

(iii) question (a), (b) and (e) in SSTRA No.40 of 2018 are answered in the positive, while question (d) is answered in the negative each in favour of the taxpayer and against the Department, while the remaining questions (c) and (f) were not argued and are hence considered as not pressed.

The office of this Court is, in terms of subsection (5) of Section 47 of the Sales Tax Act, 1990, directed to forward a copy of this order to the Appellate Tribunal Inland Revenue, SRB Karachi Bench and to place a copy of this order in each of the connected Reference Applications.

JUDGE

CHIEF JUSTICE

ANNOUNCED BY

CHIEF JUSTICE

JUDGE