

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No. D- 3239 of 2018

Date

Order with signature of Judge

13.11.2024.

Mr. Hussain Ali Almani, Advocate for Petitioner.

Mr. Malik Naeem Iqbal along with Ms. Summiya Kalwar, Advocate for SRB along with Mr. Khalid Zameer, Commissioner, legal.

Through this petition, the Petitioner has impugned a Notice / Letter dated 27.03.2018, whereby an explanation has been sought as to discrepancy in respect of short payment of sales tax on account of Support and License Fee, which according to Sindh Revenue Board is chargeable to Sindh Sales Tax as "Franchise" under Tariff Heading 9823.0000 of the Second Schedule to the Sind Sales Tax on Services, Act 2011. Learned Counsel for the Petitioner while making submissions in rebuttal, as this petition was already heard along with other set of petitions, has contended that after withdrawal of another Show Cause Notice today in respect of the same transaction and agreement in the connected petition bearing C.P No. D- 1802/2020, instant petition may also be allowed inasmuch as Support and License fee in question does not fall under Franchise Agreement (Tariff Heading 9823.0000); whereas, if at all, Software is a service, then the same was inserted by way of amendment in the Act, 2011 by addition of Section 2(84B)¹ and insertion of HS Code 9815.0000 in the 2nd Schedule to the Act, 2011 in the year 2023; whereas, Software by itself is not a Franchise transaction; hence no case can be made out against the Petitioner.

On the other hand, learned Counsel for the Sindh Revenue Board submits that in that case, matter may be remanded to the Adjudicating Authority as in this matter the Petitioner had approached even before issuance of a Show

¹ Added by the Sindh Sales Tax on Services (Amendment) Act, 2021 (VII of 2023) assented on 8.3.2023 (PTCL 2023 BS.41)

Cause Notice on a mere explanation and obtained a restraining order on 24.04.2018.

In view of hereinabove facts and circumstances of this case, and the withdrawal of the other notice in CP No.D-1802 of 2020, since admittedly Software was not taxable during the period as mentioned in the impugned Notice at page-83; whereas, the question whether the Support and License fee falls under Tariff heading 9823.0000 as a Franchise Agreement is to be decided by the Respondent after examining the facts of the case, we deem it appropriate to dispose of this petition by remanding the matter to the concerned Respondent, who shall proceed further strictly in accordance with law and considering the applicable provisions of law in question as on 27.03.2018 when the impugned letter was issued. Needless to mention that the Petitioner be allowed an opportunity of being heard and may raise all legal objections as may be available which shall be attended to by the Respondents in accordance with law.

With these observations, Petition stands disposed of in these terms.

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