

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present:**  
**Mr. Justice Agha Faisal**  
**Mr. Justice Muhammad Osman Ali Hadi**

1.	Special Sales Tax Reference Application No.349/2019	Sindh Revenue Board v. M/s. Logon Broadband (Pvt.) Ltd.
2.	SSTRA 330/2020	Sindh Revenue Board v. M/s. Logon Broadband (Pvt.) Ltd.
3.	SSTRA No.71/2021	Sindh Revenue Board v. M/s. MYN Pvt. Ltd.
4.	SSTRA No.73/2021	Sindh Revenue Board v. M/s. TCS Logistics Pvt. Ltd.
5.	SSTRA No.117/2021	Sindh Revenue Board v. M/s. Noor Enterprises Hyderabad
6.	SSTRA No.132/2021	Sindh Revenue Board v. M/s. Tracking World Pvt. Ltd.
7.	SSTRA No.70/2022	Sindh Revenue Board through AC v. M/s. Web DNA Works Pvt. Ltd.
8.	SSTRA No.71/2022	Sindh Revenue Board through AC v. M/s. Cyber Tech Communication
9.	SSTRA No.95/2022	Sindh Revenue Board, Karachi v. Cross Check Communication (Pvt.) Ltd. Karachi
10.	SSTRA No.170/2022	Sindh Revenue Board, Karachi v. M/s. Geo Entertainment Television (Pvt.) Ltd.
11.	SSTRA No.174/2022	Sindh Revenue Board, Karachi v. M/s. CNPC Chaunqing Drilling Engineering Co. Ltd.
12.	SSTRA No.802/2023	Sindh Revenue Board, Karachi v. M/s. Reliance Commodities (Pvt.) Ltd. Karachi
13.	SSTRA No.1180/2023	Sindh Revenue Board, Karachi v. M/s. Dadan and Company, Daharki
14.	SSTRA No.1856/2023	Sindh Revenue Board, Karachi v. M/s. Sky Canteen Contractor, Karachi
15.	SSTRA No.2092/2023	Sindh Revenue Board, Karachi v. M/s. Airspeed Charter (SMC-Pvt.) Ltd., Lahore
16.	SSTRA No.2093/2023	Sindh Revenue Board, Karachi v. M/s. Airspeed Charter (SMC-Pvt.) Ltd., Lahore
17.	SSTRA No.54/2024	Sindh Revenue Board, Karachi v. M/s. Reliance Commodities (Pvt.) Ltd. Karachi
18.	SSTRA No.59/2024	Sindh Revenue Board, Karachi v. M/s. Karsaz (Private) Limited, Karachi
19.	SSTRA No.60/2024	Sindh Revenue Board, Karachi v. M/s. Consteel Construction (Pvt.) Ltd., Karachi
20.	SSTRA No.62/2024	Sindh Revenue Board, Karachi v. M/s. Hilong Oil Services & Engineering Pak (Pvt.) Ltd.
21.	SSTRA No.76/2024	Sindh Revenue Board, Karachi v. M/s. Nawab Brothers (Pvt.) Ltd., Karachi
22.	SSTRA No.94/2024	Sindh Revenue Board, Karachi v. M/s. Ericsson Pakistan (Pvt.) Ltd., Karachi
23.	SSTRA No.168/2024	Sindh Revenue Board, Karachi v. M/s. Convolair (Pvt.) Ltd., Karachi
24.	SSTRA No.100/2025	M/s. Dada Sons, Karachi v. The Commissioner, SRB Unit-30A, Karachi & Others

Date of hearing : 14.10.2025

Date of decision : 21.10.2025

- Applicants/SRB : Through Malik Waseem Iqbal, Advocate  
in SSTRA Nos.70/2022, 2092/2023 a/w Mr. Zamir Ali  
Khalid, Commissioner (Legal), SRB
- M/s. Zulfiqar Ali Bhutto, Abdul Manan and  
Shamshad Ahmed, Advocates in SSTRA  
Nos.349/2019, 330/2020, 71, 73, 132/2021, 71, 95, 170,  
174/2022, 54, 59, 60, 62, 76, 94, 168/2024
- Applicant : M/s. Dada Sons, Karachi, through Mr. Muhammad  
Farhan, Advocate in SSTRA 100/2025
- Respondents : Through Qazi Umair Ali and Mr. Muhammad  
Inzimam Shareef, Advocates in SSTRA 73/2021
- Mr. Aqeel Ahmed, Advocate in SSTRA 62/2024
- Mr. Shams Mohiuddin Ansari, Advocate  
in SSTRA 60/2024
- Mr. Shoaib Noor, Advocate in SSTRA 54/2024
- Mr. Najeebullah, Advocate in SSTRA 132/2021
- Mr. Muhammad Farhan, Advocate in SSTRA  
59/2024

## **JUDGMENT**

**MUHAMMAD OSMAN ALI HADI J.-** The several above titled Reference Applications have been filed by the Sindh Revenue Board (***SRB***) under section 63 of the Sindh Sales Tax on Services Act 2011 (***SSTA 2011***) against various entities, challenging the concurrent findings decided on the same issue, whereby the Appellate Tribunal, *inter alia*, (upholding such portion of the Order-in-Appeal passed by the Commissioner Appeals) held that the Respondents not having been registered with the Applicant / Sindh Revenue Board (***SRB***), were not liable to be assessed for sales tax on services provided by them [for the said unregistered period]. As per order of this Court dated 21.05.2025, the following rephrased (common) questions of law arising from the Impugned Judgement were framed:-

- i. Whether under the provisions of the Sindh Sales Tax on Services Act, 2011, and the rules made thereunder, a person who obtains voluntary registration on a particular date can be held liable for payment of sales tax on services rendered prior to the date of such registration?
- ii. Whether the learned Appellate Tribunal was justified in upholding the decision of the Commissioner (Appeals) to the extent that the taxpayer was not liable to pay sales tax for the period prior to his

voluntary registration, even though he had provided taxable services during that period?

iii. Whether the liability to pay sales tax on services provided by an unregistered person prior to the date of registration could be shifted entirely to the withholding agent under the provisions of the Sindh Sales Tax Special Procedure (Withholding) Rules, 2011 and 2014?

iv. Whether a person providing taxable services without registration can avoid liability of sales tax merely on the basis of subsequent voluntary registration, and whether such interpretation is consistent with the scheme and objective of the Sindh Sales Tax on Services Act, 2011?

2. The arguments were commenced by Mr. Waseem Iqbal, Advocate on behalf of the Applicants / SRB,<sup>1</sup> who filed the instant reference against judgements<sup>2</sup> dated 16.11.2021 (“*the Impugned Judgement*”) passed by the Appellate Tribunal - SRB. Learned counsel for the Applicant stated the Appellate Tribunal has found that the said SSTA 2011 could not be assessed / collected from the Respondents prior to their voluntary registration for payment of sales tax on services<sup>3</sup>. Counsel referred to Para19 of the Impugned Judgement<sup>4</sup>, in which he submitted that the Tribunal has held that assessment of non-registered persons was impermissible. Learned counsel stated that taxability is applicable under SSTA 2011 irrespective of the fact as to whether the service provider was registered or not.

3. Learned counsel then referred to sections 23 and 24 of the SSTA 2011<sup>5</sup> and reiterated that the said provisions of the Act apply to any persons providing taxable services, irrespective of whether they are registered with the Applicant / SRB or not. He further referred to section 3 of SSTA 2011 and stated that any taxable service (defined therein) is liable to be taxed under the said Act. He pointed to sections 24A and B of SSTA 2011, which respectively provide for ‘*Voluntary*’ and ‘*Compulsory*’ registration, and submitted that the learned Tribunal’s ruling in this regard has misinterpreted the said provisions, by holding that

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<sup>1</sup> As there are several References before us, the page numbering shall be according to the File in SSTRA No. 70/2022 (unless stated otherwise)

<sup>2</sup> There are several separate appeals having impugned judgements on the same point, with diverse dates of decision, hence we have not mentioned any-one date but have collectively referred to all the decisions in the Spl. STRA's as “Impugned Judgement”

<sup>3</sup> Under the Sindh Sales Tax on Services Act 2011 (“SSTA 2011”),

<sup>4</sup> At page 31 of the File in SSTRA No. 70 of 2022

<sup>5</sup> Which relate to assessment and registration for sales tax on services

prior to registration with SRB, no sales tax on services would be recoverable under the SSTA 2011 from a service provider (i.e. the Respondents) until their registration process is complete.

4. Counsel next referred to section 2(71) of the SSTA 2011, which provides the definition of a '*registered person*', and submitted that the said definition encompasses any person who *is registered* or is *liable* to be registered, and that would therefore not exonerate any person who does not physically register, from any tax liability which may arise. He concluded by submitting that the Respondents have provided taxable services since the year 2013 and that the same remains payable by them, irrelevant to their registration status with the SRB.

5. The arguments put forth by the Applicants were repelled by the learned counsels for the Respondents. Mr. Qazi Umair Ali, commenced the arguments on behalf of Respondents<sup>6</sup>. He started his contentions by referring to Section 3(1A) of SSTA 2011 and stated that at the time of assessment of the Respondents, the law was different. He stated that at such time the law specifically provided for payment / liability of such tax to be made only by persons registered with the SRB. He submitted that section 3 of the SSTA 2011 as has been relied upon by the Applicant, but this was amended in 2021 to its current form, and therefore its reliance by the Applicant cannot be considered as a valid argument since the applicable time-period involved was prior to the amendment, and the previous reading would not have included persons unregistered with the SRB.

6. He next referred to section 23 of the SSTA 2011, and submitted that inclusion of a registered person should be read alongside the definition of 'registered persons' provided in Section 2(71) of SSTA 2011, which together ought to be read with the applicable provisions which were *in vogue* at the time.<sup>7</sup> In this regard he submits that a person would have to have been registered with the SRB, at such time when a determination was made against them, as the law then was.

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<sup>6</sup> Appearing for the Respondents in SSTRA No. 73/2021

<sup>7</sup> Since amendments were subsequently made to the SSTA 2011

7. He concluded by submitting that in any event, first a determination needs to be made to see whether the person fell within the bracket of being required to be registered by the SRB and liable for assessment, before any tax under the SSTA 2011 could be levied on him. He submitted that this has not been done in the case of the Respondent, and therefore, the Impugned Judgement was absolutely correct in their findings.

8. Mr. Aqeel Ahmed, advocate appearing on behalf of the Respondents in SSTRA No. 62/2024 stated that his matter pertains to the period from July 2013 - June 2014, and that the Respondent<sup>8</sup> was involved in oil drilling services which were not notified under the Second Schedule of SSTA 2011, and hence they were never required to be registered anyways. He submitted that the Respondent only subsequently registered with the SRB because of certain other ancillary services which they intended to provide, which may have required payment of SST. He continued that their primary services was of drilling, on which they remained unsusceptible for levy of sales tax on services, and they were wrongly targeted by the Applicant.

9. Learned counsel next referred section 24A of SSTA 2011 (voluntary registration) and submitted that the same was inapposite to the said Respondent.

10. Counsel then highlighted sections 3(1) & 9 of SSTA 2011<sup>9</sup> and stated that the same were never applicable to the Respondent, and that the Impugned Judgement was erroneous to such extent (only). He referred to Para 4 of the Impugned Judgement<sup>10</sup> and submitted that learned Appellate Tribunal has incorrectly stated the Respondent was liable for registration under SSTA 2011. He then averred that where there is an interpretation (in a fiscal statute) to avoid surplusage, the same should be followed, which he submits in the instant matter would apply to the benefit of the Respondent. He relied upon case law reported as **2010 PTD 2338** (@ pg. 2344).

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<sup>8</sup> In STRA No. 62/2024

<sup>9</sup> Relating to payment of sales tax on services

<sup>10</sup> At page 37 of SSTRA No. 62 of 2024

11. Mr. Muhammad Farhan, Advocate appearing in SSTRA No. 59/2024, stated that in his case, the only issue was regarding penalty imposed, for which he submits that *mens rea* is required. He submits the same was not properly adjudicated by the Appellate Tribunal. He further specified that they (M/s Karasaz Pvt. Ltd.) are also the applicants in SSTRA No. 100/2025, having challenged portions of the Impugned Judgement.

12. Mr. Shams Mohiuddin Ansari, advocate appearing for Respondent in SSTRA No. 60/2024 submitted that in his case the matter pertains to a time-period prior to 2025, and therefore under the law existing at such time they were not liable to be registered by SRB.

13. Learned Counsel for the Applicants, while using his right of rebuttal, and has referred to section 43 (Offence No.1) of the SSTA 2011, and submitted that a penalty was provided for persons who were providing taxable services, but were not registered, despite being liable in such regard. He submitted that if the arguments of the Respondents are entertained, that would make section 43 redundant, since no penalty could be imposed (in such a scenario). He has relied upon the case law reported as **2015 PTD 796** in support of his contentions.

14. We have heard learned counsel for parties and have gone through the material available on record. The primary question(s) of law we will deliberate upon pertains to whether the Respondents being service providers were liable for payment under the SSTA 2011 (providing taxable services), prior to their registration with the Applicant / SRB?

15. We shall initiate our reasonings by a perusal of the definition clause in section 2(71) SSTA 2011, reproduced below:

**“2(71). "registered person" means a person who is registered or is liable to be registered under this Act or any other person or class of persons notified by the Board in the official Gazette:**

Provided that a person liable to be registered but not registered under this Act shall not be entitled to any benefit available to a registered person under any of the provisions of this Act or the rules made thereunder;”

16. The said clause defines “*registered person*”, and in itself (through the *proviso*) illustrates a distinction between ‘persons registered’ and persons liable to be registered; by stating that persons “liable to be registered but not registered” are not entitled to any of the benefits available to a *registered person* under the Act. This would, by a clear & plain reading, indicate that an unregistered person could not be equated with the same weightage as a person who is registered.

17. It is to be noted that even if a contrary view is taken (which is not by us), and the words “*liable to be registered*” is considered to be included within the definition of “*registered person*” (as put forth by the Applicants) the same would be against the spirit of the statute (for reasons further rationalized below), as a definition clause could not create a charge nor could it defeat the substantive provisions of the statute.<sup>11</sup> A similar view was also touched upon (in the same vein) by a learned Division Bench in the case of *Digri Sugar Mills Ltd. v Addl. Collector Customs*<sup>12</sup> (of which one of us, *Agha Faisal, J.* was the author) when hearing a matter pertaining to collection of certain sales tax against unregistered persons.

18. Next, we turn our attention to section 23 of the SSTA 2011, which deals with the assessment of tax against a registered person. The explanation of who needs to be registered is defined under the following section 24 of the said SSTA 2011. This is further broken in two segments, i.e. ‘*Voluntary Registration*’ under section 24A and ‘*Compulsory Registration*’ under section 24B.

19. Section 24A is self-explanatory and allows for any person carrying on (taxable) economic activity<sup>13</sup> to have themselves voluntarily registered with the SRB.

20. Section 24B of the SSTA 2011 deals with the ‘*Compulsory Registration*’ aspect, which, to simplify, holds that if an officer of the Applicant /SRB deems appropriate, he can register a person required to be registered. Section 24B<sup>14</sup> reads:

<sup>11</sup> Reliance is placed on P 2018 SC 189 & P 2020 Sindh 62

<sup>12</sup> 2023 PTD 825 @ Para 8

<sup>13</sup> ‘Economic activity’ is defined under section 4 of the SSTA 2011

<sup>14</sup> Inserted vide Sindh Finance Act 2013 assented on 11<sup>th</sup> July 2013

**“24B. Compulsory Registration.--**(1) If an officer of the SRB is satisfied that a person is required to be registered under this Act and that the person has not applied for registration, the officer of the SRB shall, after such inquiry as he [may deem fit], register the person through an order to be issued in writing and such person shall be deemed to have registered from the date he became liable to registration.

(2) No person may be registered compulsorily without being given an advance notice and an opportunity of being heard.”

21. This section provides powers to the Applicant / SRB to register taxable service providers, after which they would be deemed to have been registered from the date they became liable for registration (i.e. from the date they provided a ‘taxable service’ as defined under section 3 SSTA 2011, discussed below). The ‘deeming’ provision in the said section has provided the Applicant / SRB an opportunity to bring a person within the registration process, and then initiate recovery from the date such person became liable for tax payment. We get support from this construction of the deeming clause through settled jurisprudence. In the case of *Federation of Pakistan v Mian Muhd. Nawaz Sharif*<sup>15</sup> a five-member bench of the Apex Court opined:

*“.....by inserting a deeming clause creates a legal fiction. Whenever such an expression is used in a statute, it shall have to be treated as something stipulated in the said provision, though in reality it may not be. It is by now a well settled principle of construction that in interpreting a provision creating a legal fiction the court has to ascertain for what purpose the fiction is created, whereafter the court is to assume all those facts and consequences which are intended.”*

22. Moving on to the next but perhaps most pivotal point, we shall consider the tax *levying* clauses of the SSTA 2011. For a person to fall within the ambit of SSTA 2011, they must be providing a ‘taxable service’, which is explained under section 3. Section 3(1) in its current (amended) form reads:

**“3. Taxable Service.—(1)** [Taxable service means a service] which is provided by a person from his office or place of business in Sindh in the course of an economic activity, including the commencement or termination of the activity.

[*Explanation-I*].—This sub-section deals with services provided by persons, regardless of whether those services are provided to resident persons or non-resident persons.]

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<sup>15</sup> PLD 2009 SC 644



[*Explanation-II*].—A service shall not be considered a taxable service on which a tax can be imposed in terms of entry 53 of Part I of the Federal Legislative List in the Fourth Schedule to the Constitution of Islamic Republic of Pakistan read with Article 142 thereof.]”

23. The above section was amended vide the SSTA (Amendment) Act 2021<sup>16</sup> [**“2021 Act”**]. Prior to the 2021 Act, section 3(1) read as:

**“3(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 or 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.”

24. The key difference between the two (amended vs original) texts is the word “registered” has been deleted before the word “person” in the amended version.<sup>17</sup> Similarly, section 9 of the SSTA 2011 which highlights ‘persons liable to pay tax’, in its current form reads:

**“9. Person liable to pay tax.—(1)** Where a service is taxable by virtue of sub-section (1) of section 3, the liability to pay the tax shall be on the [\* \* \*] person providing the service.”

25. This was amended by the 2021 Act. The said section 9 in its (prior) original form read:

**“9. Person liable to pay tax.—(1)** Where a service is taxable by virtue of sub-section (1) of section 3, the liability to pay the tax shall be on the registered person providing the service.” (*emphasis supplied*)

26. Again, the word “registered” before “person” was deleted. The above two sections are the main charging sections of the SSTA 2011. As per settled law, including recently by the Supreme Court in the case of *H.M. Extraction*<sup>18</sup> it was clearly established that imposition of taxation liability follows three basic stages: Stage 1 was *levy*; Stage 2 *assessment* & Stage 3 *recovery*. A relevant excerpt from the said judgement reads:

<sup>16</sup> Which gained assent on 8<sup>th</sup> March 2023

<sup>17</sup> NB: the said assessment / taxation periods before us in these References were prior to the 2021 Act amendment, and therefore the prior (original) text would be applicable for the instant purposes of adjudication.

<sup>18</sup> 2019 SCMR 1081

*"8.....in Whitney v. IR Commissioners (1926) 10 TC 88, in a well known passage that has stood the test of time, Lord Dunedin spelt out the three stages of a tax (at the broadest plane) in the following terms:*

*"Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."*

27. It is *sine qua non* for a person to be susceptible to levy of a tax, before the subsequent processes of assessment and recovery can become applicable. In the instant matter, the levying provisions of the original text, i.e. prior to amendment by the 2021 (amendment) Act, sections 3 & 9 SSTA 2011 specifically applied to 'registered' persons, which as discussed *ibid.* would not have included the Respondents who were (admittedly) not registered with the Applicant / SRB at the time.<sup>19</sup>

28. Accordingly, if the levying sections of the SSTA 2011 remained inapplicable to the Respondents (being unregistered at such time), then it would follow that the assessment and recovery process also could not be initiated, since the Respondents fell wide of the levy itself.

29. The Applicants had (at least per documents on record) also not forced registration upon the Respondents during such time, by invoking section 24B; nor had the Applicants (at such time) voluntarily registered under section 24A. Therefore, this tardiness of alleged collection must be attributed to the Applicant, since a specific clause (i.e. 24B) existed for them to encompass the Respondents into registration and within the tax recovery web, which they failed to do so at such time.

30. It is trite law that fiscal statutes must be interpreted strictly, with the literal approach doctrine having been repeatedly established by the Apex Court. In the case of *Allied Bank Ltd. v Commissioner Income Tax Lahore*<sup>20</sup> Justice Mansoor Ali Shah wrote<sup>21</sup>:

*"It is well settled that a literal approach is to be adopted while interpreting fiscal or taxing statutes, and the Court cannot read into or impute something when the provisions of a taxing statute are clear. While*

<sup>19</sup> NB: the proviso in sections 2(71) and 24B SSTA 2011

<sup>20</sup> 2023 SCMR 1166

<sup>21</sup> In Para No. 7 of the said judgement

*interpreting a taxing statute, the Court must look to the words of the statute and interpret it in light of what is clearly expressed therein, and it cannot imply something which is not expressed or import provisions in the statute so as to support any assumed deficiency.”*

31. In the instant matters, the statute appears clear. The Applicant / SRB had powers to enforce registration of un-registered taxable service providers, which they failed to do. The wordings (especially the levying provisions) of the statute (at the relevant time) have shown there is a distinction between persons who are registered, as opposed to those who are not.

32. This can be further be observed by the legislature, who in their wisdom vide the 2021 (amendment) Act, specifically omitted the word “registered” and left just “person” in various sections of the SSTA 2011. This illuminates that prior to the amendment, the legislature had felt there was a difference between the two, else no need would have arisen to remove the word “registered” from the statutory text. There is a plethora of settled case law showing that an amendment in statute signifies a change in the intention of the legislature as well as legal rights.<sup>22</sup> Such change is not merely an inapt consideration. In the case of *Pakistan Tobacco Co. Ltd. v KMC*<sup>23</sup> Justice Hamoodur Rehman pronounced on behalf of the Court:

*"a Legislature is deemed to be aware of the previous state of the law and if knowing this it makes a change when repealing it and re enacting some of its provisions the intention is clearly to effect a change".*

33. Lastly, we turn to the Table of Offences and Penalties under section 43 of the SSTA 2011. Serial #1 of the Table shows:

**“43. Offences and penalties.—** Whoever commits any offence described in column (1) of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under any other law, be liable to the penalty mentioned against that offence in column (2) thereof. The sections referred to in column (3) are mean for illustrative purposes only and the corresponding offence described in column (1) may fall and be prosecuted under other sections of this Act as well.

Offences	Penalties	Section of the Act to which office has reference
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<sup>22</sup> 1970 SCMR 105; 1993 SCMR 1111; 2021 PTD 484  
<sup>23</sup> P 1967 SC 241

(1)	(2)	(3)
1. Any person who is required to apply for registration under this Act fails to make an application for registration before providing taxable services.	Such person shall be liable to pay a penalty of 10,000 rupees or five <i>per cent</i> of the amount of sales tax he would have been liable to pay had he been registered, whichever is higher. In the case of non-compliance [of a notice or an order] of compulsory registration, the minimum penalty shall be 100,000 rupees. Provided that such person who is required to get himself registered under this Act, fails to get registered within ninety days of providing taxable services’, he shall be further be liable, upon conviction by a Special Judge, to imprisonment for a term which may extend to one year, or with fine which may extend to the amount of sales tax he would have been liable to pay <u>had he been registered</u> , or with both. ( <i>emphasis supplied</i> )	24[and 24B]

34. The (relevant) last word of the second column reads “...[sic] which may extend to the amount of sales tax he would have been liable to pay had he been registered, or with both” (*emphasis added*).

35. A plain perusal of this portion of the statute demonstrates that the words “had he been registered” provide a clear distinction between those persons registered and those who are not. The stipulated penalties remain applicable only upon unregistered persons; the corollary being that if a person was already registered, he would not be liable for such penalty.

35-A. In conclusion thereof, a reading and understanding of the provisions of the SSTA 2011 considered hereinabove, persons un-

registered but susceptible to taxable payments could not have been considered as registered persons under the 2011 Act.

36. The Impugned Judgment's<sup>24</sup> view is aligned with our findings. Their construal of the matter finds place in Para 19 of the Impugned Judgement,<sup>25</sup> which has deliberated its version, which we feel is necessary to reproduce (below) for purposes of clarity:

**“19.** The first point is "Whether the appellant was liable to pay SST before the date of its registration with SRB"? The discussions on this point are made as under:-

i. The Commissioner (Appeals) in his various orders has held that no SST was payable by a taxpayer before the date of its registration. Such orders have been confirmed by us and till date the same have not been set aside by the Honorable High Court in referential jurisdiction. Few of such orders are mentioned as under:-

a) Appeal No.73/2018, OLA No.97/2020 M/s Sinopec International vs. Assistant Commissioner (Unit-03), SRB dated 03.11.2020.

b) Appeal No.308/19, OLA No.109/2020, dated 02.12.2020, and Appeal No.456/2018, OLA No.110/2020, dated 02.12.2020, M/s Fiber Link vs. Assistant Commissioner (Unit-01), SRB.

c) Appeal No.303/2019, OLA No.95/2019, dated 28.10.2020, M/s Tracking Work vs. Assistant Commissioner (Unit-01), SRB.

ii. The department levied SST for the tax periods from July-2013 to June 2016. Whereas the appellant had got voluntarily registration on 13.01.2016 under Tariff Heading 9813.7000. The tax periods from July-2013 to 12.01.2016 were prior to the date of registration of the appellant with SRB.

iii. The Contention of the AC was that the person liable to be registered was deemed to be a registered and fell within the definition of registered person provided under sub-section (71) of section 2 of the Act and was liable to pay SST even before its formal registration with SRB. This contention needs to be legally examined.

iv. The relevant provisions dealing with the assessment and registration are sub-section (1) of section 23, and sub-section (1) of section 24 of the Act. Moreover sub-section (71) of Section 2 of the Act provides that registered person means a person who is registered or is liable to be registered under this Act. Sub-section (1) of section 23 of the Act deal with the assessment of tax and contemplates that in case the registered person has not paid tax due on taxable services provided by him or has made short payment, the officer of SRB shall make an assessment order. Sub-section (1) of section 24 of the Act provided that registration will be required for all persons who are residents; and provide or render any of the services listed in the Second Schedule from their registered office or place of business in Sindh. If the above contention of the AC that the person liable to be registered was deemed to be registered person is accepted sub-section (1) of section 24 of the Act relating to registration and sub-section (1) of section 23 of the Act relating to assessment of registered person would become redundant which is legally not permissible. It is a cardinal principle of statutory interpretation that

<sup>24</sup> Relevant Para 19 of the Impugned Judgment filed in SSTRA No. 70/2022

<sup>25</sup> In SSTRA No. 70 of 2022

*redundancy or superfluity must not be attributed to the Legislature, and that no part or word in a statute could be treated as superfluous.*

v. *There is an apparent conflict between Sub-section (71) of section 2 of the Act, sub-section (1) of section 23 and sub-section (1) of section 24 of the Act. Sub-section (71) of section 2 is a general provision which is declaratory in nature, whereas sub-section (1) of section 23 of the Act particularly deals with assessment of tax when such tax is not paid by registered person. Moreover sub-section (1) of section 24 of the Act deals particularly with registration of all persons who are residents and provide services listed in the Second Schedule to the Act from their registered office or place of business in Sindh. The provisions of section 23 and 24 of the Act are specific provisions dealing with specific purposes i.e. assessment of registered persons and registration of the persons providing taxable services within Sindh and will prevail over sub-section (71) of section 2 of the Act. Furthermore in case of apparent conflict between the two provisions of the same Act the subsequent provisions i.e. section 23 and 24 of the Act will prevail. In the reported case of Mst. Sakina Bibi versus Crescent Textile, PLD 1984 SC 241 it was held as under:-*

*"...Moreover, section 81 being a later provision would obviously control section 73 in case there is any conflict regarding the scope of both the provisions".*

*This view further gains support from the decision of Lahore High Court in the case of Commissioner Inland Revenue, Gujranwala vs. S.K. Steel Casting Gujranwala, 2019 PTD 1493 (relied upon by the AC-SRB) wherein it was held as under:-*

*".....16. Needless to say that under the law, a definition clause in a statute is of a declaratory nature. Though normally the definitions provided for in the definition clause are to be read into the provisions of the Act while interpreting the defined terms/words, but if the contents of the provisions of the Act indicate otherwise, the definition clause cannot override a main provision of the statute. Definition clause is foundational when construing provisions of law....."*

vi. *The status of definition clause was considered by the Honorable Supreme Court of Pakistan in the case of Chairman, Federal Board of Revenue versus M/s Al-Technique Corporation of Pakistan Limited, PLD 2017 SC 99 and it was held as under:-*

*"It is settled that a definition clause is foundational when construing provisions of law. The definition given in the Act should be so construed as not to be repugnant to the context and would not defeat or enable the defeating of the purpose of the Act. It must be read in its context and the background of the scheme of the statute and the remedy intended by it".*

*It is therefore evident that the definition clause cannot override a main provision of the statute.*

vii. *Section 3 of the Act deals with taxable service. Sub-section (1) of Section 3 of the Act provides that a 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. It is clear from mere reading of this section that it applies to the registered person and not to person liable to be registered and is not applicable to the appellant before its registration. Sub-section (2) of section 3 of the Act deals with the service that is not provided by a registered person and such service shall be treated as a taxable service if the same is listed in the second schedule to the Act and is provided to a resident person by a non-resident person. In the explanation appended below it was provided that this sub-section dealt with the services provided by non-resident persons to a resident person.*

viii. *It is thus apparent from the above provisions of the Act that the services recognized by law are those services which are provided by registered persons from its registered office or place of business in Sindh and such services are provided by a non-resident person to a resident person. However this provision does not recognize the service provided by a non-registered person.*

ix. *Section 9 of the Act deals with the person liable to pay tax. Sub-section (1) of section 9 of the Act provides that the liability to pay the tax is upon the registered person providing the services. Since the words used are "registered person" this sub-section was not applicable to the appellant prior to its registration with SRB. Sub-section (2) of section 9 of the Act provides that where service is taxable by virtue of sub-section (2) of section 3 of the Act the liability to pay the tax shall be on the person receiving the services and sub-section (3) of section 9 of the Act commencing with the word "Notwithstanding" provides for the power of the Government to notify the services or class of services in respect of which the liability to pay tax shall be on the person providing the taxable services, or the person receiving the taxable services or any other person.*

x. *The sub-section (1) of section 13 of the Act commences with the words "notwithstanding anything contained in this Act" and provided that the Board may, by a notification in the official Gazette, prescribe special procedure for payment of tax, valuation of taxable services, registration, record keeping, invoicing, or billing requirements, returns and other related matters in respect of any service or class of services and subject to such limitations and conditions as may be specified in the notification. Sub-section (2) of section 13 of the Act also commences with the words "notwithstanding anything contained in this Act" and provided that the Board may, by a notification in the official Gazette, require any person or class of persons, whether registered or not, to withhold full or part of the tax charged from or invoiced to such person or class of persons on the provision of any taxable service or class of taxable service and to deposit the tax, so withheld, with the Government, within such time and in such manner as may be specified in the notification. The provisions commencing with the word "notwithstanding" are treated as non-obstante clause and are usually used to indicate that such provision will prevail upon other provisions of the Act. By inserting sub-section (2) of section 13 of the Act the Board was authorized to shift the burden of payment of tax on any person.*

xi. *The words used in sub-section (2) of section 13 of the Act "require any person or class of persons, whether registered or not to withhold full or part of the tax charged". These words are indicative of the legislature's intention that where the legislature wants that the tax is to be withheld by non-registered person it was clearly mentioned in the section. The word "notwithstanding" is considered to be a non-obstante clause and was considered in the reported judgment of EFU General Insurance Company Limited versus Federation of Pakistan. PLD 1997 SC 700 wherein it was held as under:-*

*"...A non obstante clause is usually used in a provision to indicate that the provision should prevail despite anything to the contrary in the provision mentioned in such non obstante clause. In case there is any inconsistency between the non obstante clause and another provision, one of the objects of such a clause is to indicate that it is the non obstante clause which would prevail over the other clause".*

xii. *The Board with the approval of the Government of Sindh had framed Board Sales Special Procedure (Withholding Rules) 2011 (hereinafter referred to as the Withholding Rules, 2011) in exercise of power vested in it under section 72 of the Act read with sub-section (4) of section 3, sub-section (3) of section 9 and section 13 of the Act. However after these were repealed, the Board with the approval of Government of Sindh framed Sindh Sales Special Procedure (Withholding Rules) 2014 (hereinafter referred to as the Withholding Rules, 2014) effective from 01.07.2014. The tax periods involved from 01.07.2013 to*

*30.06.2014 was covered under Withholding Rules, 2011 and the tax periods from 01.07.2014 to 30.06.2016 was covered under Withholding Rules, 2014.*

*xiii. The responsibility of withholding agent was provided under Rule 3 the Withholding Rules, 2011. Sub-rule (3) of the rule 3 of the Rules, 2011 provided that "a withholding agent having Free Tax Number (FTN), or National Tax Number (NTN) and falling under clause (a), (b), (c), (d), or (e) of sub-rule (2) of rule 1, shall on receipt of taxable services from unregistered persons, deduct sales tax at the applicable rate of the value of taxable services provided or rendered to him from the payment due to the service provider and, unless otherwise specified in the contract between the service recipient and the service provider, the amount of sales tax for the purpose of this rule shall be worked out on the basis of gross value of taxable services".*

*xiv. The responsibility of withholding agent was provided under Rule 3 of the Rules, 2014. Sub-rule (4) of the rule 3 of the Rules, 2014 provided that "a withholding agent having Free Tax Number (FTN) or National Tax Number (NTN) or Sindh sales tax registration number (STN) and falling under sub-rule (2) of rule 1, shall, on receipt of taxable services from unregistered persons, deduct the amount of sales tax, at the tax rate applicable to the taxable services provided or rendered to him, from the amount invoiced or billed or demanded or charged by such unregistered service provider and unless otherwise specified in the contract between the service recipient and the service provider, the amount of sales tax for the purpose of this rule, shall be worked out on the basis of gross value of taxable services (under the tax fraction formula)".*

*xv. It is evident from reading both the above provisions framed under section 13 of the Act that these have overriding effect over other provisions of the Act it was clear that the responsibility for payment of SST was shifted upon the recipient of taxable service from unregistered person. Section 13 of the Act is a special provision which deals with the responsibility of payment of SST and has an overriding effect on the other provisions of the Act. In the reported judgment of State versus Zia-Ur-Rehman PLD 1973 SC 49 it was held as under:-*

*"...It is well-established rule of interpretation that where in a statute there are both general provisions as well as special provisions for meeting a particular situation, then it is the special provisions which must be applied to that particular case or situation instead of the general provisions.*

*xvi. We have gone through the judgment of S.K. Steel relied upon by the AC as discussed supra. The operative part whereof reads as under:-*

*"...17. In view of the above, our answer to the proposed questions is that he combined reading of the provisions of the Act of 1990 and the Rules framed thereunder manifestly disclose the intention of the law maker that, where a person is liable to be registered, the applicant-department is first required to register that person compulsorily or otherwise in accordance with law, and then charge sales tax from it under section 3 of the Act, 1990, and may proceed against that person regarding prior to registration contravention of the provisions of the Act of 1990, if any. In that eventuality, tax payer shall be entitled to raise all factual and legal objections against the proceedings so initiated or to be initiated by the applicant-department which are not dealt with in this judgment".*

*xvii. The issue before the Court in the above judgment was whether the ATIR was justified to set aside the orders passed by both the authorities below holding that the Order-in-Original was finalized without registration or compulsory registration, ignoring that a person liable to be registered was also included in the definition under section 25 (2) of the Sales Tax Act, 1990. It is apparent from the reading of the Order that where a person is liable to be registered, the department is first required to register that person compulsorily or otherwise in accordance with law, and then charge sales tax from it under section 3 of the Act,*



1990. However regarding prior to registration contravention of the provisions of the Act of 1990, if any, could also be proceeded against that person. No impression appears that the Court had held that the tax before registration was to be charged.

xviii. The Withholding Rules 2011 as well 2014 by specific provision shifted the responsibility of deduction and payment of SST upon the service recipient and not upon the non-registered service provider. No such provision is available in the Sales Tax Act, 1990 or rules framed there under. Thus the facts of the reported case of S.K. Steel *supra* are not applicable.

xix. There is another provision i.e. sub-section (3) of section 15A of the Act which clarifies the position as under:-

"(3) No person other than a person registered under sections 24, 24A or 24B of this Act shall claim or deduct or adjust any input tax in respect of sales tax paid on any goods or services received or procured by him for use or consumption in the provision of taxable services".

xx. The contention of the AC-SRB that "all persons providing taxable services within Sindh are deemed to be registered persons" if accepted than there was no need to enact section 24, 24A and 24B of the Act. The acceptance of contention of the AC-SRB in this regard will make these provisions of the Act redundant and nugatory. Redundancy or superfluity of an Act of Parliament and a provision of law cannot be readily accepted.

xxi. In view of the above discussions it is held that the appellant was not liable to pay/deposit SST before the date of its registration with SRB and the OIA is maintained in this regard."

37. The Tribunal's conclusions uphold the relevant portion of the Order-in-Appeal passed by the Commissioner Appeals (in Para 20 of the O-in-A) in such regard.<sup>26</sup>

38. We remain conscientious of our specific scope under the Referential Jurisdiction, and have restricted our deliberations correspondingly.

39. Accordingly, we find that **Question No. 1** is answered in the *negative* and **Questions No. 2** is answered in the *affirmative/positive* (both in favour of the Respondents).

40. **Question No. 3** has already been previously decided by a learned Division Bench in the case of *Fatima Fertilizer Company Ltd. v Commissioner-II SRB*<sup>27</sup> reported as **2021 PTD 484** and therefore need not be answered here, as the said judgement is binding upon us.

41. **Question No. 4** is answered in that under the SSTA 2011 (especially prior to the effect of the 2021 amendment Act) either a

<sup>26</sup> At page 113 of the File in SSTRA No.70 of 2022

<sup>27</sup> Authored by Agha Faisal, J.

service provider may voluntarily register themselves with the Applicant, or be compulsorily be registered by the Applicant / SRB in accordance with law,<sup>28</sup> after which the process for ascertainment and recovery of sales tax on services may be sought from them. Taxable persons avoiding registration would also additionally be answerable to the various penalties/ramifications provided under the SSTA 2011 applicable upon them.

This Reference is answered accordingly.

Judge

Judge

Ayaz p.s.

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<sup>28</sup> Per section 24A or 24 B of the SSTA 2011