

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, CJ

MR. JUSTICE SH. AZMAT SAEED

MR. JUSTICE QAZI FAEZ ISA

CIVIL APPEAL NO. 911 OF 2015

*(On appeal from the judgment dated
22.5.2015 in CP No. D-2603/2015 passed
by the High Court of Sindh Karachi)*

Habib Safe Deposit Vault (Private) Ltd.

.... Appellant

VERSUS

The Province of Sindh through Secretary Finance and others

.... Respondents

For the Appellant : Mr. Agha Faisal, Advocate Supreme Court
Mr. Tariq Aziz, Advocate-on-Record

For Respondent No.1 : Mr. Sheryar Qazi, Additional Advocate General

For Respondent Nos. 2 & 3 : Syed Ahmad Hassan Shah,
Advocate Supreme Court

Date of Hearing : 17th November 2015

JUDGMENT

QAZI FAEZ ISA, J. Habib Safe Deposit Vault (Private) Limited was granted leave to appeal the judgment dated 22nd May 2015 of the Hon'ble High Court of Sindh at Karachi vide order dated 18th September 2015, which is reproduced hereunder:

“Learned ASC appearing on behalf of the petitioner contended that if sub-heading 9813.4000 is read carefully only the services provided or rendered by banking companies, in relation to sub-headings 9813.4100, 9813.4200, 9813.4300, 9813.4400, 9813.4500, 9813.4600, 9813.4700, 9813.4800, 9813.4900, 9813.4910 and 9813.4990 are taxable, therefore, the services provided or rendered by the petitioner which is not a banking company cannot be made taxable under the aforesaid sub-heading by any means.

2. Learned ASC appearing on behalf of the respondents No. 2 and 3 contended that though a taxing statute has to be construed strictly but it does not mean that its provisions be construed in isolation with utter disregard to its overall scheme; that if the words used by the legislature in the main headings are read as such not only the services provided or rendered by banking companies, insurance companies, cooperative financing societies, modarabas, musharikas, leasing companies, foreign exchange dealers, non-banking financial institutions are taxable but also those of other person dealing therewith. In any case, he added, the Courts of law are required to place harmonious construction

on the statute so that none of its parts be rendered nugatory or redundant.

3. Points urged having some substance, merit a consideration. We, therefore, convert this petition into appeal. Since the matter relates to tax it be listed for hearing within two months. Interim order passed in the case shall continue till then. The appeal shall be prepared on the available record with the liberty to the parties to add thereto.”

2. The impugned judgment reproduces a partial extract of the tariff heading 98.13 and its subheadings from the Second Schedule of the Sindh Sales Tax on Services Act, 2011 (“**the Act**”), however, to appreciate the respective contentions of the learned counsel it would be appropriate to reproduce from the Second Schedule of the Act the tariff heading 98.13 and all subheadings there under:

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.	15%
9813.1000	Services provided or rendered in respect of insurance to a policy holder by an insurer, including a reinsurer.	15%
9813.1100	Goods insurance	15%
9813.1200	Fire insurance	15%
9813.1300	Theft insurance	15%
9813.1400	Marine insurance	15%
9813.1500	Life insurance	15%
39813.1600	Other insurance including reinsurance	15%
39813.3000	Services provided or rendered in respect of leasing	15%
39813.3010	Financial Leasing	15%
39813.3020	Commodity or equipment leasing	15%
39813.3030	Hire purchase leasing	15%
39813.3900	Services provided or rendered in respect of modaraba and musharika financing	15%
9813.4000	Services provided or rendered by banking companies in relation to:	15%
9813.4100	Guarantee	15%
9813.4200	Brokerage	15%

9813.4300	Letter of credit	15%
9813.4400	Issuance of pay order and demand draft	15%
9813.4500	Bill of exchange	15%
9813.4600	Transfer of money including telegraphic transfer, mail transfer and electronic transfer	15%
9813.4700	Bank guarantee	15%
9813.4800	Bill discounting commission	15%
9813.4900	Safe deposit lockers	15%
9813.4910	Safe vaults	15%
49813.4990	Other services not specified elsewhere	15%
9813.5000	Issuance, processing and operation of credit and debit cards	15%
9813.6000	Commission and brokerage of foreign exchange dealings	15%
9813.7000	Automated Teller Machine operations, maintenance and management	15%
9813.8000	Service provided as banker to an issue	15%
9813.8100	Others, including the services provided or rendered by non-banking, finance companies, modaraba and musharika companies and other financial institutions.	15%
9813.9000	Service provided or rendered by a foreign exchange dealer or exchange company or money changer	15%

3. Mr. Agha Faisal, the learned counsel for the appellant, stated that the appellant runs the business of providing safe deposit lockers to its customers, but as it is not a banking company the provision of such service is not liable to sales tax. In this regard he referred to the Second Schedule of the Act and the entries therein in respect of “*safe deposit lockers*” (tariff subheading 9813.4900) and “*safe vaults*” (tariff subheading 9813.4910) which, according to the learned counsel, would only attract sales tax if such services are provided by banking companies. He also referred to tariff subheading 9813.4000 which lists the, “*Services provided or rendered by banking companies in relation to:*”, where under are mentioned “*safe deposit lockers*” (tariff subheading 9813.4900) and “*safe vaults*” (tariff heading 9813.4910) and stressed that the words - “*in relation to*” - which are followed by a colon do not leave room for any other interpretation. The learned counsel stated that to such extent the Hon’ble High Court had agreed with the appellant’s contention (in paragraph 6 of the judgment), but

that it regrettably erred by concluding, “*that the petitioner being part of a banking company Habib Bank Limited is liable to pay sales tax*”. He assailed the finding of the learned Division Bench of the High Court, with regard to the appellant being a part of a banking company, as it was contrary to the facts, fully borne out by the incontrovertible documents that had been placed on record. The learned counsel also relied upon the judgment in the case of Citi Bank NA v. Commissioner Inland Revenue, (2015) 111 Tax 82, which is an order of a learned Single Judge of the High Court of Sindh at Karachi.

4. Syed Ahmad Hassan Shah, the learned counsel for the Sindh Revenue Board (respondent No.2) and the Assistant Commissioner of the Sindh Revenue Board (respondent No.3) however stated that the High Court had disregarded an important aspect of the case. According to the learned counsel, the appellant is liable to pay sales tax pursuant to tariff heading 98.13 which imposes sales tax at the rate of 15% on “*other persons dealing in any such services*” and the appellant comes within the term “*other persons*” and provides “*such services*”; and this contention of the Sindh Revenue Board was not considered by the learned Bench of the High Court, despite it being specifically pleaded as is also confirmed by paragraph 4 of the impugned judgment, reproduced hereunder:

“On the other hand, Mr. Khalid Zamir, Dy. Commissioner, Legal, Sindh Revenue Board argued that Tariff Heading 98.13 describes various service-providers which not only include banking companies but by virtue of the phrase “*other persons dealing in any such service*” include anyone whose services are covered by Tariff Heading 98.13 and the petitioner renders services covered under Headings 9813.4900 and 9813.4910, it is liable to pay sales tax under Sindh Sales Tax on Services Act, 2011.”

He also stated that though the learned judges had found the appellant to be a part of Habib Bank Limited (a banking company) the liability of the appellant is not based on such determination alone.

The “rate of tax” against all the entries reproduced in the impugned judgment is shown to be “16%” however *vide* Sindh Finance Act, 2014 (which came into effect on 7th July 2014) the rate of tax was brought down to 15%.

5. The learned counsel for the appellant is correct in stating that tariff subheading 9813.4900 (safe deposit lockers) and tariff subheading 9813.4910 (safe vaults) are in respect of services provided or rendered by banking companies, since these two tariff subheadings are listed under tariff subheading 9813.4000 and are, “*in relation to:*” services which are provided or rendered by banking companies. The learned counsel for the appellant meticulously took us through the documents on record to show that the appellant was neither a banking company nor was a part of Habib Bank Limited, which is a banking company. The learned counsel for the Sindh Revenue Board however does not seriously dispute that the appellant is not a banking company, but states that the appellant is liable to pay sales tax under tariff heading 98.13 as it cannot be excluded from “*other persons*” who deal in “*any such service*”, whether or not *such persons* are a banking company. We therefore proceed to consider this proposition.

6. We have gone through the Second Schedule and against a number of tariff headings no rate of tax is mentioned, such as tariff headings: 98.01, 98.02, 98.15, 98.18, 98.19, 98.20, 98.21, 98.22, however, tariff heading 98.13 mentions a rate of tax of 15%. Incidentally, each of the tariff subheadings (9813.1000 through to 9813.9000), which are listed under tariff heading 98.13, also prescribe the same rate of tax, i.e. 15%. The learned counsel for the appellant contended that as each subheading prescribes a rate of tax therefore, the rate of tax stipulated in heading 98.13 will be of no consequence. He further stated that confusion would result if the rates in the tariff heading and tariff subheadings were different.

7. In our opinion it is not without significance that tariff heading 98.13, unlike some other tariff headings in the Second Schedule, stipulates a rate of tax. The appellant’s learned counsel’s contention that, confusion would occur if the said tariff heading and any tariff subheading prescribed different tax rates, is not correct, because,

if a particular rate of tax is prescribed under a specific subheading, which is different from the general rate of tax mentioned in the tariff heading, the rate of tax prescribed in the subheading would apply on the principle that the specific excludes the general; reference in this regard may be made to the cases of State v Zia-ur-Rahman (PLD 1973 Supreme Court 49, relevant at page 89W) and Neimat Ali Goraya v Jaffar Abbas Inspector/Sargeant Traffic (1196 SCMR 826, relevant at page 833B).

8. The next questions which requires our consideration is whether the appellant is required to pay sales tax on the provision of safe deposit lockers (even if it is not a banking company) under the tariff heading 98.13 which also applies to “*other persons*”. The learned counsel for the appellant could not advance any argument that could possibly exclude the appellant from *other persons*, nor can we think of a reason to do so. Section 3 of the Act sets out what is a “*taxable service*” and section 5 explains how the same is valued. Section 8 of the Act is the charging section and states that sales tax is levied, “*on the value of taxable service at the rate specified in the Schedule in which the taxable service is listed.*”

9. Since the appellant undoubtedly comes within the phrase “*other persons*” therefore the next question to be determined is whether it provides “*services*” in terms of the Act. The definition of ‘services’, and its further explanation, is contained in clause (79) of section 2 of the Act, as under:

“**service**” or “**services**” means anything which is not goods or providing of which is not a supply of goods and shall include but not limited to the services listed in the First Schedule of this Act.

Explanation: A service shall remain and continue to be treated as service regardless whether or not the providing thereof involves any use, supply or consumption of any goods either as an essential or as an incidental aspect of such providing of service;

Safe deposit locker and safe vaults are mentioned in subheading 9813.4900 and 9813.4910 respectively of the abovementioned First Schedule; however, even if the same were not mentioned therein it would not in itself exclude a person since the definition proceeds to state - *but not limited to the services listed in the First Schedule.*

10. The appellant comes within the phrase - “*other persons*” as mentioned in tariff heading 98.13 and provides services of *safe deposit lockers / safe vault* to its customers. The said tariff heading 98.13 also prescribes a rate of tax (15%). Therefore, the appellant is liable to pay sales tax at such rate on the services that it provides. However, the learned Bench of the High Court had brought the appellant into the sales tax net by holding, “*that the petitioner being a part of a banking company Habib Bank Limited is liable to pay sales tax*” and that “*banking companies would be liable to pay sales tax on rendering these ten services*”, which include the service of safe deposit locker and safe vault respectively under tariff subheading 9813.4900 and 9813.4910. The learned counsel has successfully dispelled the assumption that the appellant is a banking company, but as stated above this fact in itself would not exclude the liability of the appellant to pay sales tax.

11. The appeal is disposed of in the above terms, but with no order as to costs. We take this opportunity to commend both the learned counsel who dexterously and fairly advanced their respective submissions.

Judge

Judge

Judge

Announced in open court

On 21st December 2015

By Justice Qazi Faez Isa

At Islamabad

APPROVED FOR REPORTING
(Zulfiqar)