



B-COM-APP/2016/197075  
GOVERNMENT OF SINDH  
SINDH REVENUE BOARD  
Karachi, dated 26<sup>TH</sup> December, 2016

**BEFORE THE COMMISSIONER (APPEALS) SINDH REVENUE BOARD**

**APPEAL NO. 260/2016**

**ORDER-IN-APPEAL NO. 220/2016**

M/s International Steels Limited,  
101, Beaumont Plaza, 10 Beaumont Road,  
Karachi

Appellant

Versus

Ms. Anbreen Fatima,  
Assistant Commissioner (Unit-10),  
Sindh Revenue Board, 12<sup>th</sup> Floor,  
Shaheen Complex, M.R. Kiyani Road, Karachi.

Respondent

Representative(s): M/s Bilal & Co for the Appellant.

Respondent in person.

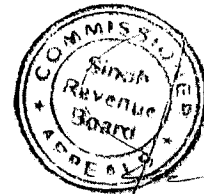
Date of filing of Appeal: 01-09-2016

Date of hearing of Appeal: 01-12-2016

Date of Order: 26-12-2016

**ORDER**

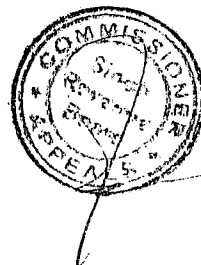
**Zamir A. Khalid, Commissioner (Appeals) SRB,**---By this Order, I intend to dispose of the above titled/numbered Appeal against the Order in Original, bearing No. 756/2015 dated 15<sup>th</sup> August, 2016 (hereinafter referred as the "OIO") passed by the Assistant Commissioner-10 against the Appellant.



1. Brief facts of the case as narrated in the OIO are that the Respondent had perused the note 20 of the audited financial accounts of the Appellant for the year ended June, 2014, wherein it was mentioned that the Appellant has provided the services of manufacturing on toll basis. After the show cause notice the Appellant submitted that the mainly the Appellant provides manufactured paints in relation to color coil coating, which is a major activity of the Appellant. That in addition to the main activity the Appellant also does manufacturing/processing, being a small portion of the activity of the Appellant. The Respondent treated small portion of the activity of the appellant as the services provided in the matter of manufacturing and processing for others on toll basis, those classified under tariff heading 9830.0000 of the Second Schedule of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred as the "Act, 2011"). Accordingly, the Respondent took the value of services for the year ended June, 2014 and June, 2015 as Rs: 10,960,000/- & Rs: 135,960,000/- respectively and imposed a tax of Rs: 22,147,600/- (20,394,000 + 1,753,600), held to be recoverable along-with the default surcharge. Besides, the following penalties were also imposed.

- a. A penalty of Rs: 1,107,380/- for violation of section 24 and Rs: 100,000/- for non-compliance of notice of compulsory registration as against Offence No. 1 of table of section 43 of the Act, 2011.
- b. A penalty of Rs. 4,156,930/-, further calculable from the date of OIO to the date when the payment will be made @ rate of 333.33 per day, as against Offence No. 2 of table of section 43 of the Act, 2011.
- c. A penalty of Rs. 3,121,680/-, further calculable from the date of OIO to the date when the payment will be made @ rate of 333.33 per day, as against Offence No. 3 of table of section 43 of the Act, 2011.

The penalties totaled as Rs: 8,485,990/-. The Appellant felt aggrieved and filed this Appeal before me.



In the hearing before me the AR of the Appellant contention of the Appellant was that when he produces the steel sheets from raw material of others it remains manufacture. And thus the same cannot be taxed by the Provincial Legislature. He further submits that the Province of Sindh has not challenge the definition contained or amended by the Federation. Therefore, has accepted that the activity is manufacture and not a service. The Appellant relied on the Judgments reported in 2006 PTD 730, 2010 PTD 1269 and 1980 PTD 201. Further without prejudice to the basic contention submitted that the Appellant has paid the sales tax on the activity and the penalties cannot be imposed in absence of *mens rea* on the part of the Appellant.

3. On the other hand the Respondent distinguished the cases relied upon, except the case of Collector of Customs vs Solve Tech decided by the Honorable Peshawar High Court. Against the Respondent submitted that equally the Honorable Sindh High Court had held in the Judgment reported in 2006 PTD 1459 that the activity is a service. She further relied on the Judgment of the Honorable Appellant Tribunal of the SRB in the case of Al-Abid Textile Mills. By this Judgment the Honorable Appellant Tribunal upheld the Order in Original and Order in Appeal in principle. In view of the same the Respondent sought to uphold the OIO.

4. I have heard both the parties, have perused the record of file and have also gone through the relevant provisions of law. In order to understand the activity in question, first of all the definition of "service" contained at clause (79) of section 2 of the Act, 2011 is required to be read and understood. The same is reproduced as under:-

*2(79) "service" or "services" means anything which is not goods and shall include but not limited to the services listed in the First Schedule of this Act.*

*Explanation-II: Unless otherwise specified by the Board, the service or services involved in the supply of goods shall remain and continue to be treated as service or services."*

5. Admittedly the material used by the Appellant is not owned by the Appellant but is owned by the clients. It was further admitted that the Appellant uses its facility to process the material for making steel sheets. The Appellant works for them by processing the same and providing them finished goods for onward sale by them.



Against such activity the Appellant receives consideration. In an ordinary course, a service is such in which there is an arrangement between the parties, i.e the work done for the other by a person against a consideration. In a situation if such raw material was owned by the Appellant and finished goods were being provided or sold or supplied by the Appellant, then the same could not be termed as service and could have been termed as such in some other way, i.e the disposition of goods, or a manufacture, as used in the definitions of supply and manufacturing, from time to time in the Sales Tax Act, 1990. The arrangement is such that the Appellant is doing something for others by using his facility, carrying out the processing of the raw material and providing the finished goods to its customers. The same is the arrangement in most of the other services mentioned in the schedule, in which the outcome is a tangible substance (goods), i.e construction services, services provided by the persons engaged in the contractual execution of works or furnishing supplies, installation and commissioning services, the services of furnishing supplies, and many other services listed in the 2<sup>nd</sup> schedule. The definition reproduced above says that anything which is not goods is a "service". Obviously the activity in question is not goods but is a processing for other under an arrangement on toll basis, therefore is a service within the meaning of the Act, 2011. This makes it clear without leaving behind any cavil that the elements contained in the arrangement are of a provision of services and not merely the activities of a manufacture-cum-exporter.

6. The next question in my mind is the activity as "manufacture" in light of the definition contained in the Federal Statutes. The term manufacture presently has been defined in the Federal Sales Tax Act, 1990 and the Federal Excise Act, 2005 as under:-

"Section 2(17) of the Sales Tax Act, 1990:

*"2(17) —manufacturer or —producer means a person who engages, whether exclusively or not, in the production or manufacture of goods whether or not the raw material of which the goods are produced or manufactured are owned by him; and shall include —*

*(a) a person who by any process or operation assembles, mixes, cuts, dilutes, bottles, packages, repackages or prepares goods by any other manner;*

*(b) an assignee or trustee in bankruptcy, liquidator, executor, or curator or any manufacturer or producer and any person who disposes of his assets in any fiduciary capacity; and*



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(c) any person, firm or company which owns, holds, claims or uses any patent, proprietary, or other right to goods being manufactured, whether in his or its name, or on his or its behalf, as the case may be, whether or not such person, firm or company sells, distributes, consigns or otherwise disposes of the goods

[Provided that for the purpose of refund under this Act, only such shall be treated as manufacturer-cum-exporter who owns or has his own manufacturing facility to manufacture or produce the goods exported or to be exported;]"

Federal Excise Act, 2005:-

Section 2 "(16) "manufacture" includes,-

(a) any process incidental or ancillary to the completion of a manufactured product;

(b) any process of re-manufacture, remaking, reconditioning or repair and the processes of packing or repacking such product, and, in relation to tobacco, includes the preparation of cigarettes, cigars, cheroots, biris, cigarette and pipe or hookah tobacco, chewing tobacco or snuff, or preparation of unmanufactured tobacco by drying, cutting and thrashing of raw tobacco, and the word "manufacturer" shall be construed accordingly and shall include,-

(i) any person who employs hired labour in the production or manufacture of goods; or

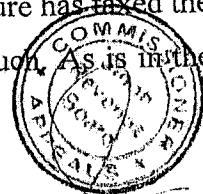
(ii) any person who engages in the production or manufacture of goods on his own account if such goods are intended for sale; and

(iii) any person who engages in the production or manufacture of goods on his own account if such goods are intended for sale; and

(c) any person who, whether or not he carries out any process of manufacture himself or through his employees or any other person, gets any process of manufacture carried out on his behalf by any person who is not in his employment:

Provided that any person so dealing in goods shall be deemed to have manufactured for all purposes of this Act, such goods in which he deals in any capacity whatever;"

7. The plain reading of the both the above provisions reveals that nowhere in the context the word "service" has been used. But the legislature has used the word and termed the activity as "manufacture" even if the raw material was not owned by the manufacturer. What is required to be seen is that in its very nature the activity is manufacture and there is no cavil in it. But "what is role of the Appellant" is important to the Provincial Legislature. The role of the Appellant is that it uses its facility and does manufacturing/processing, where the Appellant works on toll basis. In my humble opinion there is no contradiction in the laws as the Provincial Legislature has taxed the element of services and has not imposed the tax on manufacture as such.



case of Article 163 of the Constitution where it imposes provincial tax in relation to professions. The Honorable Sindh High Court gave a Judgment in the case of M/s Habib Jute Mills Limited versus the Province of Sindh and another, reported in 2012 PTD 901 that when imposed a provincial tax under Article 163 is a tax on profession and not a tax on income. The same way this Provincial tax is a tax on services of manufacture and process on toll basis and a tax on manufacture as such. In this regard the Respondent has relied on the Judgment given by the Honorable Sindh High Court of Sindh, reported in 2006 PTD 1459, titled as M/s. Amie Investment (Pvt.) Limited versus Additional Collector-II.

8. Brief facts giving rise to controversy in the Appeal under the Judgment, of the Honorable Division Bench of the Sindh High Court, were that M/s Amie Investment (Pvt) Ltd was engaged in conversion of the ship plates into mild steel twisted bars. A show-cause notice was issued by the Additional Collector sales tax on the grounds that the Appellants have unlawfully paid fixed sales tax on the manufacture of re-rolled products as well as on the basis of conversion charges, instead of paying sales tax at standard rates on the value of the supplies. It was the case of the department that since the notification in respect of fixed sales tax scheme was rescinded therefore M/S Amie Investment (Pvt) Ltd had become liable to pay sales tax at standard rate during the periods in questioned in that appeal. The controversy in hand of the Honorable Court was that Tribunal found the appellants liable to pay sales tax in certain periods "at standard rates on value of supplies" instead of the tax "on conversion charges". The Honorable Court in order to determine and decide the controversy had discussed the term "disposition of goods" and the term "supply" in detail and had held as under:-

"Page - 3 of the judgment":-

*"To determine the controversy as framed reference is to be made to the charging provision in the Sales Tax Act, 1990. Relevant provision in subsection (1) of section 3 of Sales Tax Act reads as follows:*

*(3) Scope of tax, (1) subject to the provisions of this Act, there shall be charged, levied and paid, a tax known as sales tax at the rate of fifteen per cent of the value of;*

*(a) taxable supplies made in Pakistan by a registered person in the course of furtherance of any taxable activity carried on by him; and*

*(b) .....*



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A minute perusal of the above provision reveals that in order to attract the charging provision taxable supplies should be made by a person who is registered under the Sales Tax Act in the course or furtherance of any taxable activity. Term taxable supply has been defined in subsection (41) of section 2 of the Act as supply of taxable goods in Pakistan.

Since sales tax is payable on the value of supplies, therefore it would be very material to determine as to whether the transaction between the appellant and its Principal falls within the ambit of supplies. Supply as defined in subsection (33) of section 2 of the Sales Tax Act runs as follows:-

"(33) "supply" includes sale, lease or other disposition of goods carried out for consideration and also includes—

- a. Putting to private, business or non-business use of goods acquired, produced or manufactured in the course of business;
- b. Auction or disposal of goods to satisfy a debt owed by a person; and
- c. Possession of taxable goods held immediately before a person ceases to be a registered person;
- d. Such other transaction as the Federal Government may, by notification in the official Gazette specify;"

A supply which could attract charging of sales tax, in accordance with the definition as reproduced above, can be visualized as follow:-

- (a) Sale;
- (b) Lease;
- (c) Other disposition of goods in or furtherance of business carried out for consideration;
- (d) Putting to private, business or non-business use of goods acquired, produced or manufactures in the course of business.

The transaction between the appellant and its Principal can by no stretch of imagination be termed as sale or lease as such it requires no deliberations. Now it is to be examined as to whether the transaction, as above, amounts to "other disposition of goods in or furtherance, of business carried out for consideration". There can be no denial of the fact that the business of the Appellant is carried out for consideration, but the question which needs to be examined is as to whether the returning of goods by the Appellant after processing, would amount to "disposition of goods". The term "disposition" has not been defined in the Act and the ordinary meaning of the word 'disposition' as defined in various Dictionaries are as under:-



*Black's Law Dictionary (Sixth Edition)* 'act' of disposing, transferring to another. The parting with the care or the possession, alienation with, or giving up of property'.

*Concise Oxford Dictionary (10<sup>th</sup> Edition)* 'The action of disposing or transferring property or money to someone, in particular by bequest. The power to deal with something as one pleases.'

The expression 'disposition' further was considered by the Supreme Court of India in the cases of *Goli Eswarian v. Commissioner of Gift Tax AIR 1970 SC 1722* and it was held that 'the word disposition is not a term of law'. Further it has not precise meaning. Its meaning has to be gathered from the context in which it is used.

Since the word 'disposition' has not been defined in the 'Act' therefore the ordinary meaning of the word which is of wide connotation is to be adopted. It is used only as an expression of transfer inter vivos or by operation of law and for such purpose an element of ownership must exist upon the goods/property under disposition or at least the person acquiring the goods must possess some right or title in the goods in order to dispose it of at his will. Consequently, the returning of goods cannot be included in the expression 'disposition of goods'.

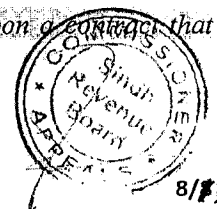
It brings us to examine as to whether said transaction amounts to putting the goods acquired, produced or manufactured in the course of business to private, business or non-business use'. The expression 'manufacture' has been defined in subsection (16) of section 2 of the Act which reads as follows:

'Any process in which an article singly or in combination with other articles, materials, components is either converted into other distinct article or product or is so changed, transformed or re-shaped that it becomes capable of being put to use differently or distinctly and includes any process incidental or ancillary to the completion of a manufactured product.'

The processing of goods by the Appellant surely is a manufacturing process. However, the pre-condition to include the goods acquired, produced or manufactured in the course of business is the 'use' of the goods by the person who acquired, produced or manufactured the goods and in the present case the Appellant did not use the goods to attract the consequences of supply.

In our opinion, the transaction between the Appellants and their Principal can safely be termed as a contract of bailment as defined in section 148 of the Contract Act, which is reproduced for the sake of convenience:-

'148' "Bailment", "bailor", and "bailee" defined. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that





they shall when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

A perusal of the above provision of law reveals that the goods are delivered by the bailor (principal in this case) to the bailee (Appellant in this case) for some specific purpose and the accomplishment of the purpose for which the goods were delivered termed as supply in order to attract the consequences of charging provisions.

However, in case, if the goods are disposed of by the bailee (Appellants in the present case), at the instructions of the bailor (principal in the present case) then, of course such disposition of goods would amount to supply and would invite consequences accordingly. However, in such eventuality, the supplier would be bailor and not the bailee and the purchaser would be the person to whom the goods are disposed of at the instructions of bailor.

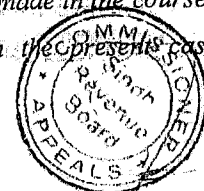
Adverting to the case of Ambar Tobacco Company (Pvt.) Limited (supra) a demand was raised upon the petitioner in the light of charges received for the conversion.

"It will be seen that supply is not confined to sale transaction but extends to other disposition of goods in furtherance of business carried for consideration, including manufacturing in the course of business."

It was observed that since the petitioners were manufacturing cigarettes in the course of business, therefore, were liable to pay sales tax on the value of supply and not on conversion charges. We have given our anxious consideration to the findings by the learned Division Bench of the Peshawar High Court. With all due deference and respect for the learned Judges, we are not able to persuade ourselves to accept that 'manufacturing in the course of business' could, by any stretch of imagination, be termed as supply as it is not the manufacturing which attract the charging provision but its sale, lease, disposition or use.

So far as the case of Messrs General Tyre and Rubber Company (Pvt.) Limited (supra) is concerned, we are in agreement with the following observations of a Division Bench of this Court:--

"From the above it is clear that much emphasis has been given by the legislature for levy of sales tax on the taxable supplies made in the course of or in furtherance of any taxable activity. Whereas in the present case the



*undisputed fact is that raw material was supplied by appellant to Diamond Rubber Mill and after its process, it was returned back to him. Thus, element of inclusion of sale tax is not appearing during this whole transaction, as processing activity was carried out by Diamond Rubber Mill on the fixed processing charges as settled vide letter, date 29-06-1999 with no factors of sale, lease or other disposition of goods, as embodied in section 2(33) of Act or explained in Sale Tax General Order 1198. Therefore, levy of sale tax under section 3 of Act, entitling a registered person to deduct input tax from the output tax, is not available to appellant."*

*The above discussions leave no room for any doubt that the transaction between the Appellant and their principal, amounts to bailment and not a 'supply' as envisaged in section 3 of the 'Act' therefore the conversion charges received by the Appellant cannot be subjected to charging provision of the 'Act'.*

*For the foregoing reasons, we answer the question framed above by holding that no Sales Tax was payable by the appellant either on the value of goods returned to its principal or on the charges received for the conversion.*

*The logical consequence is that the Sales Tax Department has wrongly received the sale tax on conversion charges which is in the nature of consideration for providing services. The Department has not moral or legal justification to retain this amount paid by the Appellant on account of ignorance of law, which should be returned refunded."*

9. It will be seen that the Honorable High Court has clearly termed the arrangement of processing and conversion as a services and has also held that such arrangement do not constitute disposition of goods, or a supply or goods. Therefore, it is clear from the self-explanatory and clear Judgment that in case of the present Appellant the processing of goods by the Appellant cannot be termed as disposition of the goods, since the Appellant is not the owner of the raw material and therefore such in its nature is a contract of bailment. The Article 201 of the Constitution, says that subject to Article 189, any decision of a High Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law has to be binding on all courts subordinate to it. Therefore, when the Judgment makes it very clear that such is a service and not merely the manufacture, then that has to be applied as a law. The Appellant relied on the Judgment of the Honorable Peshawar High Court in the case of



Collector of Sales and Central Excise versus Solve-Tech reported in 2010 PTD 1269 but he was not aware of the fact that the Honorable Sindh High Court has already discussed the same case in the Judgment relied upon by the Respondent (as reproduced above), wherein the Honorable Sindh High Court has not agreed with the Peshawar High Court that the very activity in that case was manufacture as whole. But the Honorable Sindh High Court has discussed in detail the nature of activity, as to disposition or sale of goods and the conversion charges and has recognized the conversion charges as separate and attributable to the services rendered as consideration against the same. I have also read the Judgment of the Honorable Supreme Court of Pakistan in the cases reported in 2006 PTD 730 and 1980 PTD 201. In both the cases the question was not the processing and manufacturing on toll basis. In the earlier case the issue pertained to the manufacturing of polyethylene bags for packing of ghee manufactured by the M/s Mahboob Industries (Pvt) Ltd. And in the later the waste cotton owned by the M/s Colony Textile Mills Limited was the issue. In both the cases the parties were not acting to manufacture for others on toll basis. Therefore, in facts and circumstances of the case the case of the Appellant is distinguishable from the both the Judgment of the Honorable Supreme Court. In view of the above it is very safe to hold that such is a service to within the meaning of the Act, 2011 and thus the OIO is legal and valid.

10. Now, since the Appellant has brought the Federal and Provincial Law at par, therefore it will also be advantageous in the circumstances to advert to the question whether there is a conflict between the Provincial and Federal Legislature. It is required to be seen that the subject of "services" has never been the domain of the Federation as is apparent from the scheme of legislation of the Constitution of Islamic Republic of Pakistan. By a specific amendment the entry 49 of the Part - I of the Federal Legislative List was amended to include the following phrase [*except sales tax on services*]. Previously the entry said "*Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed*". Bare study of the entry will show that the subject of services has never been the domain of the Federation. And its amendment had further clarified the position of the subject of services to mean that this subject has always been the subject of Provinces.

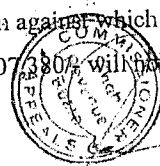


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11. It will be seen that from study of all the above provisions of the Federal laws, the terms "service" have never been used nor a tax against any service has been levied. In my humble opinion the use of the phrase "whether or not the raw material of which the goods are produced or manufactured are owned by him" does not affect the taxability under the Act, 2011 and by such phrase the very nature of arrangement cannot be construed otherwise. The Federal Legislature has taxed the very activity of manufacture, and not the arrangement of manufacturing for other on toll basis. The Provincial Legislature has not acted against the Constitution, therefore there is no question of intervention into the domain of the Federation. The Honorable Sindh High Court also clearly established in the above case that conversion charges are against the services and not against the supply or disposition of goods in that case. The view point above established was also ratified by the Honorable Appellant Tribunal of the SRB, as in the case of M/s Abid Silk Mills (Pvt) Limited. The Appeal was decided by me and the Order in Appeal was upheld in principle by the Honorable Appellant Tribunal.

12. For the given reasons, I hold that the arrangement as such is a service within the meaning of Act, 2011 and there is no illegality carried in the OIO by which the arrangement has been taxed by considering it the manufacturing for others on toll basis. The OIO is elaborative and speaking and faces no legal or factual infirmity and is accordingly hereby upheld in principle.

13. As far as the penalties are concerned it will be seen that the Appellant is adamant not to register and pay the tax in presence of the clear law to this effect. Therefore the disregard to law should not go unpunished. However, in case of penalties against Offence No. 1 the situation needs consideration. The Respondent has imposed 02 penalties as against Offence No. 1, i.e, a penalty of Rs: 1,107,380/- as against violation of section 24 and a penalty of Rs: 100,000/- as against non-compliance of notice of compulsory registration. After reading the Offence No. 1 and language of penalty there-against I have learned that there is no mention regarding payment of any penalty as against the violation of section 24. But the Offence speaks about penalties against non-compliance of notice or order of compulsory registration against which the penalty has already been imposed. Therefore, the penalty of Rs: 1,107,380/- will not be

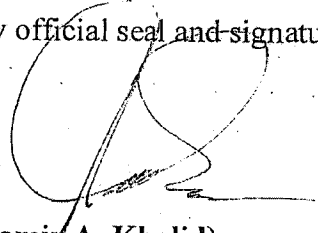


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payable. As far as the remaining penalties are concerned the Appellant is adamant on his stance despite of clear interpretation by the Respondent in the OIO. In view whereof the Appellant is liable to pay the penalties.

14. The Appellant is accordingly directed to pay the above amount of tax, the default surcharge and also directed to file true and correct returns as per law, forthwith. However, considering it a special case where there are huge penalties imposed, the Appellant shall only be liable to pay the penalties established hereinabove, if he fails to pay the amount of tax and default surcharge and also fails to file true and correct returns of the past periods up-to-date, within one month of the receipt of this Order. Order accordingly.

15. This Order comprises (13) pages each page bears my official seal and signature.



(Zamir A. Khalid)  
Commissioner (Appeals)  
Sindh Revenue Board, Karachi

**Via Courier Services/Registered Post to:**  
M/s International Steels Limited,  
101, Beaumont Plaza, 10 Beaumont Road,  
Karachi

(Zamir A. Khalid)  
Commissioner (Appeals)  
SINDH REVENUE BOARD

**Copy for Information and necessary action to:**

- 1) The Chairman, Sindh Revenue Board, Karachi.
- 2) The Commissioner-I, Sindh Revenue Board, Karachi.
- 3) Deputy Commissioner (Legal Wing), Sindh Revenue Board, Karachi.
- 4) The Assistant Commissioner (Unit-07), SRB, Karachi.
- 5) Guard File.
- 6) Office Copy.