

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-174/2015

M/s Media Max (Pvt.) Ltd. Appellant

Versus

1/ Commissioner (Appeals), SRB, Karachi
2/ Assistant Commissioner - IV, SRB, Karachi Respondents

Mr. Adnan Mufti authorized representative and
Mr. Muhammad Tarique, ITP, For the Appellant

Mr. Aamir Ali, Deputy Commissioner, SRB, Karachi
Mr. Vicky Kumar, Assistant Commissioner, SRB and
Mr. Zain Manzoor, Assistant Commissioner, SRB, Karachi For the Respondents

Date of hearing 03.05.2018
Date of Order 07.05.2018

ORDER

Razia Sultana Taher: This appeal has been filed by the appellant challenging the order in appeal No.113/2015 dated 16th May, 2015 passed by the Commissioner (Appeals) in appeal No.118 of 2014 dated 09.10.2014 confirming the order in original No.475 of 2014 dated 9th September, 2014 passed by the Assistant Commissioner, SRB.

In short, the facts of the case as stated in the order in original are that the appellant are e-enrolled / e-registered with Sindh Revenue Board under the service category of advertisement services falling under tariff heading 98.02 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as SSToS Act, 2011) and the same being chargeable to Sindh Sales Tax. That the appellant in their income tax return had declared services amounting to Rs.60,827,943/- as against the declared output tax of Rs.2,116,160/- shown in the monthly Sindh Sales Tax returns for the tax periods from July, 2012 to June, 2013 which resulted in short declaration and non-payment of Sindh Sales Tax to the extent of Rs.7,616,310/-. The respondent required the appellant to provide the bifurcation of all the revenue for the period from July, 2012 to June, 2013 declared in the Income Tax returns along with summary of invoices, payments and declarations made in the returns to Sindh Revenue Board, in order to ascertain if Sindh Sales tax had been deposited in the Government of Sindh's head of account.

3. The concerned Assistant Commissioner in the order in original No.475/2014 dated 9th September, 2014 observed and concluded, that the appellant had failed to provide the information / documents that "the service receipts of Rs.60,827,943/- is inclusive of receipt which are not liable to sales tax hence, the same have not been declared in sales tax return and the service receipts of Rs.60.827 million is inclusive of service income of Rs.49,057,559/- from M/s Airwaves Media (Pvt.) Ltd. on which the said company has already paid sales tax, therefore the registered person is not liable to pay further sales tax", but the appellant failed to do so. So much so that the referenced amount was not reflected in the undertaking nor confirmed by M/s Airwaves Media (Pvt.) Ltd. The appellant was ordered to pay Sindh Sales tax amounting to Rs.7,616,310/- alongwith default surcharge under section 44 of the SSToS Act, 2011 and penalty of Rs.1,218,609/- imposed under Serial No.3 of the table under section 43 of the SSToS Act, 2011.

4. The said order of the Assessing Officer was challenged by way of filing of appeal before the Commissioner (Appeals) who dismissed the appeal and upheld the order in original.

5. During the course of hearing, the appellant's counsel stated the case has been based on the income tax returns. The authorized representative drew attention to paragraph 2 of the written submission and page 4 of order in original and added that the appellant is also an advertising agent but the activity of the appellant has not been added in the profile with SRB. The authorized representative of the appellant reiterated the previous stance that the order in original was passed for the tax period July 2012 to June 2013 on the basis of the income tax returns and it was assumed in the order that the appellant had rendered advertisement services falling under tariff heading 98.02 of the Second Schedule without taking into consideration the agreement, which was submitted during adjudication process. The Agreement reveals that the appellant was appointed by Airwaves Media (a tv channel) (TV one) as sole advertising agent, both the lower forums i.e. the Commissioner (Appeals) and the Assistant Commissioner failed to refer to the agreement and the service provided by the appellant was not then taxable during financial year 2012-2013 and tariff heading 9805.7000 of Second Schedule 'advertising agent' became taxable w.e.f.01.07.2013. The learned counsel added that in order to substantiate the version, the copies of invoices contained in 9 box files, agreements, financial statements and correspondence between M/s Airwaves have been provided to the respondent. The counsel argued that the documents reveal, that the appellant rendered non-taxable services instead of advertisement services and further submitted that it is pertinent to take a note that respondent had not shown a single document which can prove that appellant rendered advertisement services.

6. The authorized representative argued that respondent had time and again denied the agreement, which reveals that the appellant is advertising agent and authorized to issue invoices to various advertisers on behalf of M/s Airwaves – The appellant earned commission on each invoice which was issued on behalf of M/s Airwaves, such commission was not taxable during financial year 2012-2013 and invited reference to paragraphs 5 and 6 of the agreement. Further stated that respondent had denied the commissions earned by the appellant which are apparent from the reconciliation submitted to respondent along with invoices (contained in 9 box files). He further contended that (i) whether the appellant during the relevant period was

providing services of Advertising Agent and next, whether the services of advertising agent was taxable during that period. The authorized representative added that the departmental representative could not comprehend the business properly, the appellant renders both services since 2011 of advertising agent and advertising services. The invoice of Airwaves Media confirms that he appellant is an advertising agent and the departmental representative had not been able to produce a single invoice which shows that the appellant actually rendered advertisement services under the garb of advertising agent. Furthermore, the respondent failed to highlight the specific sub heading of tariff heading 98.02, under which the appellant is sought to be taxed and suspects that they are not agent because they are involved in support services and recovery without realizing that support services and recovery is not advertisement services. The authorized representative continued that the DR failed to offer any explanation or rebuttal against the invoices, payment proof, reconciliation produced to confirm that the appellant earned commission and was also not aware that under PBA rules, advertising agents appointed by channel do not require registration with PBA rather agents appointed by clients are required to be registered. The respondent failed to note No.1.3 of the Audited Financial Statement which confirmed that the appellant was appointed as sole advertising agent by M/s Airwaves Media. The respondent also did not confirm receipt of commission by the appellant from the concerned parties and also failed while arguing on 'daybranding' marketing services the same is not advertisement.

The authorized counsel stated that no classification was done at the original stage and the appellant was classified under main heading 98.02. No direction can be received by reading the agreement only and audited accounts were submitted at Note No.1.3 – audited accounts shows that invoices were issued by M/s Airwaves through appellant M/s Media Max and the said invoices were declared by Airwaves Media in their Sales tax returns. Media Max earns commission on issuance of invoice and collection of payments which is shown in para 5 of the agreement.

7. In response to the submission of the appellant's counsel, the respondent submitted that appellant is a registered person and provided taxable services of advertisement to M/s Airwaves Media (Pvt.) Ltd. Both the persons have neither declared their transaction in the Sindh Sales Tax returns nor had paid the tax. The appellant was required under section 26 read with rule 29 sub rule I read with Circular No.4/2012 dated 07.03.2012 to issue invoices but no record has been given to the department. The appellant had submitted invoices of M/s Airwaves, wherein service provider is M/s Airwaves and recipients are various advertisers. The nine box files provided by the appellant do not pertain to the instance case because service provider M/s Airwaves and recipients are various advertisers and the appellant is not a party in these transactions. The invoices also do not contain any particulars of M/s Media Max including its charges and the use of appellant's name on invoices does not make the invoice as to belong to the appellant. The respondent continued that appellant is not a advertising agent as per Pakistan Broadcasting Association record because they are not registered with PBA as advertising agent and do not figure in PBA website. The appellant's own website www.mediamax.com introduces the appellant as 'First Broadcast Marketing Company in Pakistan' rather than 'Advertising Agents'.

The respondent further submitted that appellant is registered with SRB as advertisement service provider falling under tariff heading 98.02 of the Second Schedule to the SSToS Act, 2011. The appellant had been providing advertisement services since July 2011 and had been filing returns as well. As per agreement, the appellant provided services in relation to sale of commercial airtime, sponsorship, day branding, commercial songs for the said channels Airwaves Media. The respondent continued that the appellant also provided services in relation to billing and recovery from the clients (advertisers) on behalf of M/s Airwaves Media. The contents of the agreements are in the nature of provision of advertisement services more specifically broadcast marketing. Definition of "broadcast marketing" and the services of advertisement are taxable with effect from 01.07.2011 in terms of section 3 read with section 8 read with tariff heading 98.02.

The respondent submitted that under section 26, it is the responsibility of registered person to issue tax invoices, despite the direction of the Tribunal - the appellant has not provided a single invoice of the impugned transaction. In fact they have submitted that no invoice has been raised. The primary objective of the agreement is provision of advertisement services and rest are services in relation to primary object of the provision of advertisement services.

8. The respondent represented by Mr. Zain Manzoor, Assistant Commissioner stated that advertisement agent was not taxable prior to 1st July, 2013 and appellant was voluntarily registered with SRB as on advertisement on TV / advertisement falling under tariff heading 9802.5000 – some channels were selling space / time through advertisement agent and some were selling time / space through media buyers / buying houses and explained that the media buyers purchases the time on tv and thereafter allocates the time accordingly. The sale invoices are issued by the media buyer and in this case, the time has been taken by the media buyer under an agreement with the tv channel (Airwaves Media – TV one channel, Waseb channel). The media buyer has issued invoices on the service they have acquired or purchased from M/s Airwaves media. The relevant portion of the agreement is at clauses 2, 6, 7 between media buyer and M/s Airwaves. The media buyer was issuing invoices to the different buyer whose advertisement were shown on tv. Here the media buyer raises invoices in the name of the TV channel and the rates of slots on tv are fixed by media buyer in consultation with the TV channel as given in clause 2 of the agreement. The clause 2 of the agreement also states that the media buyer will enter into an agreement with the clients and not the tv channel, the copy of the report submitted gives the definition of media buyer. The respondent argued that the appellant sold space / advertisement, himself, raised the invoices and are service provider and registered in advertisement category under tariff heading 9802.1000. There is an agreement between the appellant and TV channel (Airwaves Media) TV One. The channel has subletted the space to the appellant as detailed in clause I of the agreement. In Clause 2 of the agreement, the appellant was given the right to fix the rates of advertisement thereafter, the appellant entered into different agreements with different clients and provided service of advertisement on TV and raised invoices to the clients (service recipient). They are providing advertisement on TV falling under tariff heading 9802.1000 and were not acting as advertising agent at the time when the service was provided. The appellant's claim that he has provided services of advertisement agents is not true, the appellant issued invoices for the rendering of service of

advertisement on tv showing duration / spot, the said invoice also shows the program wherein the said advertisement is to be run on Airwaves Media (Pvt.) Ltd. and the collection of gross amount and sales tax is the responsibility of the appellant as also mentioned in paragraphs 6 and 7 of the contract signed with the Airwaves Media.

Furthermore, the agency commission shown on invoices submitted by the appellant do not relate to the appellant themselves instead this commission is payable to the advertisement agent of the client whose advertisement are shown on the tv channel. In this transaction, the appellant is a service provider, who is providing 'advertisement on tv'. The appellant has provided all the services but failed to declare the same in SST return. The citation relied upon having distinguishable facts and is not relevant.

9. We have heard the learned representatives of both sides and perused the record made available to us. Before proceeding we would like to place on record that appellant last attended the hearing in November 2017 and thereafter sent Misc. Applications received on 26.12.2017 and 31.01.2018 and had stated that arguments from their sides had been concluded and remained absent on the subsequent hearing dates. The appeal case cannot be kept pending indefinitely and the same is being decided on merit on the basis of available record.

The appellant has taken the stance that the case is based on income tax returns, that they were appointed by M/s Airwaves Media as sole advertising agent and that the service provided by the appellant was not then taxable during the period July 2012 to June 2013. At the time of hearing the appellant stated to have provided 9 box files to the respondent in order to substantiate their version and both parties sought time for reconciliation. The respondent on the other side submitted that the appellant got registration with SRB on 17th January, 2012 as service provider of 'Advertisement of TV / Advertisement' and not as "Advertising Agent", the said services are taxable w.e.f.1st July, 2011 under tariff heading 98.02 read with Section 3 of the SSToS Act, 2011. Available on record of the file, is a copy of the appellant's profile which shows the date of enrolment as 17.01.2012, the basis reads as 'voluntary registration' and the principal activity as 'advertisement on TV' and type of service as 'Advertisement'. Next document is a copy of Sindh Revenue Board Sales Tax on Services Returns, Name M/s Media Max (Pvt.) Ltd. and tax period reads as July, 2011, on the reverse side the sale type is shown as 'services' and also gives the amount. Also available on record is a photocopy of certificate dated 11th April, 2015 from Finance Manager, Airwaves Media (Pvt.) Ltd. which certifies that all sales tax invoices generated through M/s Media Max (Pvt.) Limited during the period 1st July, 2012 to 30th June, 2013 have been reported and Sindh Sales tax @ 16% amounting to Rs.7,616,309/- has been accounted as per law. Furthermore, the appellant in their written submission on 19.12.2016 have stated "that the sales tax involved in the instant case was already paid by Airwaves". The appellant in the fact and ground of appeal have stated that an amount of Rs.60,827,943/- had been taken by the respondent from the Income Tax Return showing the services rendered during the tax periods from July 2012 to June 2013 and per the appellant, the respondent department "neglected the fact that such commission is earned as inclusive part of the services rendered by Airwaves whereon Sindh sales tax has already been deposited by the service provider and had declared the same in its monthly sales tax returns during the tax periods from July 2012 to June 2013" and also stated that commission earned from specified

services rendered to M/s Airwaves which are duly declared in the sales tax return of both M/s Airwaves (service provider) and service recipient.

10. In the case both the parties have taken a different stand, the appellant insistence that it provided advertisement agency services of Rs.49,057,539/- which were not taxable during the period July 2012 to June 2013. Therefore, the appellant was not required to charge Sindh Sales tax nor required to declare in the returns, whereas the respondent strongly argued that the appellant has provided taxable advertisement services to M/s Airwaves Media (Pvt.) Ltd. of Rs.49,601,937/- which involves Sindh sales tax amount of Rs.7,616,310/- during the period from July 2012 to June 2013 and submitted that in these transactions service provider is M/s Media Max (Pvt.) Ltd. and service recipient is M/s Airwaves Media (Pvt.) Ltd. and that the agreement shows that the appellant has provided advertisement services to M/s Airwaves Media (Pvt.) Ltd. and the services so rendered do not constitute services of advertising agent.

The respondent concluding his arguments, submitted that the appellant provided the record which contained sales invoices on which Sindh sales tax involved comes to Rs.34,598,015/- for the tax period from July 2012 to June 2013 issued by the appellant (as per clause 6 of the Contract between the appellant and the TV channel). It thus shows that the appellant was responsible to issue invoices to the clients which is also proved by the sample of invoices produced by the respondent. The invoices generated by the appellant bear the name and logo / monogram of M/s Media Max.

11. The respondent further submitted that the appellant provided summary of invoices which contains the Sindh Sales tax and those invoices whose particulars have been provided but no Sindh sales tax have been mentioned i.e. the invoices which do not bear the SST amount have not been provided to the respondent. The respondent is directed to further examine on receipt of data i.e. invoices not showing the amount of Sindh Sales tax, determine the nature of services given by the appellant wherein SST has not been charged. The respondent confirmed that where the appellant provided invoices showing Sindh sales tax, the same stood reconciled hence, the only issue which has remains outstanding is to the extent of 106 invoices of Rs.22,047,472/- wherein, an amount of Sindh Sales tax of Rs.3.5 million remained unreconciled.

12. It is not out of context to add here that the misc. application have been received in Tribunal on 26.12.2017 and 31.01.2018, whereby the appellant informed for the first time that the respondent attached the Director's bank account. This fact was not brought to the notice of the Tribunal at any time during the course of hearing / arguments i.e. not in their verbal or written submissions. The Tribunal was subsequently informed through misc. application received on 26.12.2017, 11.01.2018 and 31.01.2018 that the assessing officer had attached Director's bank account of the appellant. The assessing officer cannot attach the personal bank account of the Director. The Director whose account was attached may apply to the assessing officer for refund of the amount.

13. In view of the above discussions we feel it is necessary that the assessing officer / respondent thoroughly re-examine the case, and provide proper opportunity of hearing to the appellant, who is also directed to produce all relevant and detailed documents. We therefore,

in exercise of powers vested in the Tribunal as provided under clause (b) of sub-section (5) of section 62 of the SSToS Act, 2011 set aside the orders by the Assistant Commissioner SRB and the Commissioner (Appeals) only to the extent of 106 invoices not submitted by the appellant and remand the case to the concerned Assistant Commissioner to determine the nature of services and the Sindh sales tax liability, if any, duly substantiated after confronting the appellant. The exercise will be completed within 60 days from the date of receipt of this order.

14. The appeal is disposed of in the above terms.



(Muhammad Ashfaq Balouch)
JUDICIAL MEMBER



(Razia Sultana Taher)
TECHNICAL MEMBER

Karachi

Dated:08.05.2018

Copies supplied for compliance:-

1. The Appellant through authorized Representative.
2. The Assistant Commissioner (Unit-), SRB, Karachi.

Copy for information to :-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) The Deputy Commissioner (Legal), SRB, Karachi.
- 5) Office Copy.
- ✓ 6) Guard File.

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