

(Quoted file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

DOUBLE BENCH-II

APPEAL NO. AT-175/2015

M/s Interlink Multimedia (Pvt.) Ltd. Appellant

Versus

Commissioner (Appeals), SRB Respondent

Mr. Ahsan Laliwala, FCA and
Mr. Muhammad Rameez, ITP For Appellant

Mr. Zain Manzoor, Assistant Commissioner, SRB For Respondent

Date of hearing ^{AMB} 06.12.2018

Date of Order 10.12.2018

ORDER

Agha Kafeel Barik: This appeal has been filed against the order of the Commissioner (Appeals) dated 11.05.2015, whereby he confirmed the order in original dated 25.11.2014 and dismissed the appeal being devoid of merit. The facts of the case are as under.

2. M/s Interlink Multimedia Private Limited (hereinafter referred as "Appellant") provided certain taxable advertisement services to service recipients mainly "Google" but in its sales tax returns it declared sales as "Exempt" or "Zero rated". The Appellant was therefore issued a show cause notice (hereinafter referred as "SCN") dated 28th August, 2014, to explain as to why non-paid amount of Sindh sales tax (hereinafter referred as "SST") of Rs.5,780,012/- against value of services amounting to Rs.36,125,076/- declared as zero rated in the monthly sales tax returns for the period from February, 2014 up to July, 2014, may not be assessed and recovered from them under section 23 read with section 3,8,9 and 47(1) of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred as "Act-2011) along with default surcharge under section 44. Besides, the Appellant was also required to explain as to why penalties under clauses (2), (3), (11), (12) and (13) of the Table under section 43 of the Act-2011 may not be imposed for violation of Section 8, 9, 10, 13, 18, 30 read with Sindh Sales Tax Special Procedure (Withholding) Withholding Rules, 2011 (hereinafter referred as "Withholding Rules-2011")."

3. However, while response was made by the Appellant it did not produce copy of contract duly signed with Google / their representative with respect to the aforesaid payments received by them in support of their contention; instead copies of unsigned and unstamped invoices

were provided which did not suffice the evidence sought. In view of the all these facts, the officer concerned concluded that, sales tax of Rs.5,780,012/- against value of the services amounting to Rs.36,125,076/- received from Google was recoverable from the Appellant. The AC-SRB therefore ordered for recovery of SST of Rs.5,780,012/- assessed under section 23 read with section 47(1) along with default surcharge under section 44 of the Act-2011. Besides, the AC-SRB also imposed penalties of Rs.1,387,200/- (Rs.289,000 under serial 3, Rs.173,400/- under serial 11 and Rs.924,800/- under serial 13 of the Table in Section 43 of the Act-2011) for violation of section 8 by non-deposit of sales tax, violation of section 13 and for repeating the aforesaid offences.

4. The appeal filed by the tax payer against order in original was dismissed by Commissioner (Appeals), hence this appeal before us.

5. The appellant challenged the impugned order on various technical grounds, beside the factual grounds and on merits as under.

5.1. "That the learned Commissioner (Appeals) failed to appreciate that the appellant had not provided any "advertisement services" to Google Inc. rather it has only provided space / right to Google Inc. to display advertisements of their clients on the appellant's website. Hence, the advertisement services were provided only by Google and not the appellant.

Without prejudice to above, the learned Commissioner (Appeals) even himself stated and admitted in para 64 (page 60 of the order that Google is earning huge revenue from advertisement and pay to those who increase their number of traffickers as in the case of appellant and hence the appellant has not provided advertisement services rather Google had provided."

5.2. "That the learned Commissioner (Appeals) erred to confirm levy on the conclusion that the object of providing space to Google on Appellant's website is "advertisement by Google". The learned officer failed to distinguish that "advertisement services" are taxable but not the providing of space on website; i.e. these are two different species and two different type and nature of services; while one is specified in Second Schedule to the Act and other is not."

5.3. "That the learned Commissioner (Appeals) erred to intermingle the revenue from Google for space / right on its website with the advertisement services provided by appellant itself on its website. While in the case of former same is not taxable whereas in case of later; the appellant had duly charged and paid sales tax."

6. Mr. Vicky Kumar Dhingra, AC-SRB submitted his comments in writing filed on 14.11.2016;

6.1. "That, during the scrutiny of appellant's SST returns for the tax period from February to June 2014, it was revealed that the registered person has declared that it has provided zero

rated / exempt services to "M/s Google Inc." with Dummy NTN i.e.9999997-8 amounting to Rs.36,125,076/- whereas there was no nay exemption as per the SRB notification No.SRB/Leg(I)/2011 dated 01.07.2011. therefore, the appellant was issued show cause notice dated 28.08.2014 wherein the SST of Rs.5,780,012/- was confronted along with default surcharge and penalties thereof.

6.2. "That, after considering the contentions of the appellant, the order in original No.688 of 2014 dated 25.11.2016 was issued wherein the SST demand of Rs.5,780,012/- was raised in addition to default surcharge under section 44 (to be calculated at the time of payment) and penalties amounting to Rs.1,387,200/-."

6.3. "That Rs.287,202/- was recovered through proceedings under section 66 of the Act-2011."

6.4. "That, being aggrieved with the said assessment order, the appellant filed the appeal before the Commissioner (Appeals), SRB who upheld the said order vide order in appeal No.109/2015 dated 11.05.2015."

6.5. "That, being aggrieved with the said appellant authority, the appellant filed the instant appeal and parawise comments to the same are as under:"

6.6. "The appellant has declared in its returns that it has provided "exempt" services and the onus lies on the appellant to prove as to which exempt services it has provide. Reliance is placed upon the judgment of **Honorable Supreme Court of Pakistan cited as 2014 PTD 1861 in case of CENTRAL BOARD OF REVENUE ISLAMABAD and another Versus WAPDA** and another wherein the Honorable bench held as under:

".....Exemption clause---Interpretation and scope—Exemption clause had to be strictly construed---Person claiming an exemption had to bring his case within the four corners of the exemption and unless he did so he could not be granted exemption."

7. Heard both the parties on the issues raised in the grounds of appeal. Mr. Ahsan Laliwala FCA submitted that the issue raised in this appeal has since been decided by the Divisional Bench I of Appellate Tribunal, SRB in an appeal No.AT/46/2014 decided on 09.05.2017 in the case of M/s Independent Media Corporation. He submitted that since the facts and circumstances of both cases are similar this appeal may also be allowed following the said judgment. Relevant part of the cited judgment is reproduced below.

"The department has also taxed the service allegedly provided to Google. The contention of the appellant is that under an agreement between Google and appellant, which reflects that the payment received by the appellant is not on account of rendering any service rather for monetizing contents, which are made available to Google to be displayed at their own or their partner's site. Mr. Ahsan Laliwala further explained that programs were uploaded on Google

Site; in which revenue has been earned by Google on the basis of advertisements provided by Google or Google approved third party and displayed or streamed on the YouTube video player and on Playback page. These advertisements were not provided by the appellant rather by Google and only the page of the appellant was used with its permission. He further explained that the use of this right is even outside Pakistan beyond the territory of Sindh. From the explanation of the appellant it is clear that the appellant neither provided or rendered nor received any advertising services nor is liable to pay any tax in this regard. For claiming tax it is necessary for the Department to first establish that either the appellant is a service provider or service recipient or advertising service in which the department failed. The appellant is not liable to pay any tax in this regard."

Finally on the issue of "services provided to Google" the Tribunal decided that:

"Appellant is not liable to pay or deposit the sales tax."

8. Since the issue has already been decided by D.B.-I of this Tribunal on similar facts and circumstances in a parallel case while appeal in this case was pending and since the decision of the other D.B. is binding on this Bench of Appellate Tribunal, thus respectfully following the Tribunal's decision in appeal No.AT/46/2014 dated 09.05.2017, we allow this appeal and set aside the impugned order.

9. Since the appeal is allowed as above, there is no need to dilate on any other ground of appeal.



(Muhammad Ashfaq Balouch)
MEMBER JUDICIAL



(Agha Kafeel Barik)
MEMBER TECHNICAL

Karachi

Dated :10.12.2018

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

Copy for information to :-

3. The Commissioner (Appeals), SRB, Karachi
4. Office Copy.
5. Guard File.

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