

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT-70/2017

M/s The Brand Partnership (Pvt.) Ltd.....Appellant

Versus

Assistant Commissioner, SRB, Karachi.....Respondent

Mr. Shakilur Rehman, FCA for Appellant

Mr. Zain Manzoor, AC. SRB, Karachi for Respondent

Date of hearing 06.02.2018 & 08.02.2018

Date of Order 12.02.2018

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been initially filed by the Appellant challenging the order-in-original No.250/2015 dated 04.05.2015 passed by the Assistant Commissioner (Mr. Muhammad Yousuf Bukhari) SRB, Karachi before Commissioner (Appeals), SRB who has transferred the same to the Tribunal under section 59 (7) of the Sindh Sales Tax on Services Act, 2011 for deciding the same in accordance with law.

1. The facts of the case as mentioned in the Order-in-Original are that the Appellant was registered with SRB on 15.10.2012. It was stated that the Advertisement Services and Services of Advertising Agent of Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) is chargeable to Sales tax. It was also stated that the appellant was advised to comply with the legal provisions.
2. It was alleged in the order ion original that the appellant issued release orders of Advertisement Services of USAID Pakistan and UNICEF etc. without Sindh Sales Tax. It was also alleged that an amount of Rs.26,067,975/= have been credited into the business bank account of the appellant bearing No. 1020-0081-004179-01-3, maintained at Bank

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Al-Habib, Korangi Road, Branch, Karachi, during the tax periods 01.07.2013 to 30.04.2014. It was further alleged that the appellant failed to declare any activity with SRB and had continuously filed NULL tax returns. It was also alleged that the appellant knowingly and deliberately understated its services liability of Rs.4,170,876/=.

3. A show-cause notice dated 24.02.2015 was issued to the appellant to explain as to why the Sindh Sales tax of Rs.4,170,876/= may not be assessed and recovered along with default surcharge and penalties. The appellant despite receipt of notice and appearance of M/s Shakilur Rehman & Co., Chartered Accountants failed to submit written reply.
4. The Assessing Officer on the basis of credit entries available in the bank statement determined the value of service as Rs.26,067,975/= and passed the assessment order in the sum of Rs.4,170,876/= along with default surcharge. The Assessing Officer imposed penalty of Rs.1,170,100/= under serial No.2 of section 43 of the Act. The Assessing Officer also imposed penalty of Rs.208,543/= under serial No.3 of section 43 of the Act and Rs.417,086/= and Rs.2,097,000/= for repetition of offence under serial No. 13 of section 43 of the Act.
5. The Appellant challenged the Order-in-Original by way of filing appeal before the Commissioner (Appeals) who instead of deciding the same has transferred the appeal before this Tribunal taking benefit of section 59 (7) of the Sindh Sales Tax on Services Act, 2011.
6. During pendency of appeal before Commissioner (Appeals) an order dated 03.08.2015 was passed for preparation of Reconciliation Statement on the basis of details to be provided by the appellant. The learned AC filed Reconciliation Report Dated 11.01.2018 in respect of Bank Account No. 1020-0081-004179-01-3, and 1020-0081-004179-02-4. The Said Report is reproduced below:-

Reconciliation of payment Account (417901-3)

Internal transfer

22,050,368/-



Loan	4 m
LG Commission	9,280/-
Revenue Receipt	8,327/-
Total Credits	26,067,975/-

Reconciliation of Collection Account (417902-4)

RECONCILIATION

Description	Receipt	Invoice	Agency commission	SST	SST WHT	Payable
Print Media	62,304,511	69,270,978	10,091,987	1,614,718	-	1,614,718
Electronic Media	77,681,833	130,105,630	21,032,476	3,365,196	-	-
Radio Media	3,344,420	8,539,786	1,270,357	103,257	203,257	-
Production House	2,018,288	2,860,169	656,743	39,405	-	39,405
Outdoor	241,118	1,832,200	489,913	78,386	-	78,386
Non-Taxable	12,811,245	-	-	-	-	-
Unexplained	13,995,080	16,706,321	-	-	-	-
Total	172,396,296	229,315,084	33,541,476	5,300,962	203,257	1,732,509

Transaction from 01.07.2013 to 03.07.2013 reversed. Accordingly, Bank statement taken from 04.07.2013.

7. The learned AC filed another Report Dated 06.02.2018, which is reproduced as under:-

After reconciliation of both accounts (payment and collection) the report of the reconciliation was submitted to the Commissioner (Appeals) by the then Assessing Officer (Copy of reconciliation is attached as Annexure-B),

After the reconciliation of collection amount the

SST payable stands: Rs. 1,732,509/-

Less paid by the Appellant: Rs. 2,000,000/-

Add: Penalties 43(2) Rs. 1,170,100/-

43(3) (revised) Rs. 86,625/-

43(13) nonpayment Rs. 173,250/=

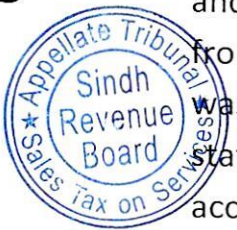
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43(13) repetition on non-filing	Rs. 2,097,000/-
Default surcharge on payable Rs.1,732,509/-	Rs. 227,430/-
Total payable	Rs. 3,486,914/-

8. Mr. Zain Manzoor the learned AC submitted that the Reconciliation Report dated 11.01.2018 was prepared on the basis of details of Bank Book of Account No.41799-02-04 of Bank Al Habib, Korangi Road Branch, Karachi for the period from 1st July, 2013 to 30th June, 2014. The copy of the said Bank Book is available on page No.98 of the Appeal file sent by Commissioner (Appeals). He then submitted that the appellant despite providing and rendering taxable services used to file Null returns which mean no taxable business activity. He also submitted that till date the appellant despite depositing of Rs.2 million on account of tax failed to revise tax returns. He further submitted that the appellant dishonestly filed NULL tax returns and is liable to pay penalty under serial No. 2 and 3 of section 43 of the Act for non-filing of true tax returns, non-payment of tax and default surcharge.

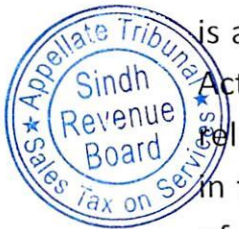
9. Mr. Shakilur Rehman the learned Representative of the appellant in addition to his written arguments submitted that the appellant is not liable to pay any sales tax on commission received from print media as the services of print media is exempt from payment of Sindh Sales Tax and therefore the commission earned from print media is also exempt from payment of sales tax. He then submitted that the assessment of tax was erroneously based on the credit entries available in the bank statement of payment account and not on the basis of collection account. Mr. Shakil also challenged the imposition of default surcharge and penalties on the ground that mensrea and malafides are lacking. Mr. Shakil further submitted that deposit of Rs.2 million was under protest as the department has attached the bank accounts and request that the said amount may be refunded.



We have heard the learned representatives of the parties and perused the record made available before us.

10. The Assessing Officer has finalized the assessment on the basis of credit entries available in Bank Account No.1020-0081-004179-01-3 and determined the value of service to Rs.26,067,975/- and levied tax of Rs.4,170,876/- along with default surcharge and penalties of Rs.1,170,000/- under section 43(2), Rs.208,543/- under section 43(3), Rs.417,086/- under section 43(13) and Rs.2,097,000/- under section 43(13). The Assessing Officer before assessing the tax neither properly determined the nature of service nor value of service. The assessment of tax only on the basis of Bank Statement or credit entries available in the Bank Statement without any supporting material to link the said entries with providing or rendering service is illegal and cannot be sustained.

11. The other point raised by Mr. Shakil is that since the Advertising Services of print media is exempt from payment of sales tax the commission received from such service is also exempt and no tax is payable by the appellant. It is not disputed that the appellant is acting as Advertising Agent on behalf of his principles i.e. Advertisers in Newspapers. The advertising agent has been defined under sub-section (3) of section 2 of the Act, which provides that the advertising agent means a person engaged in providing any service connected with the making, preparation, display, demonstration or exhibition of advertisement in any manner and includes an advertising agency or media agent or advertising or media consultant, by whatever name called. The appellant is an agent of its principal in terms of sub-section (4) of section 2 of the Act. The appellant acted on behalf of its principal to create a legal relationship with third party in relation to publication of advertisement in the newspapers/print media and facilitates its principal in publication of advertisements in the newspapers. The appellant is engaged in providing service connected with the making, preparation, display, demonstration and exhibition of advertisement in the newspapers and his activities fall within the definition of "Advertising Agent" and is liable to pay sales tax on services of Advertising Agent. The argument of the appellant that it is dealing in exempt services has no force. Service of advertisement in newspapers and periodicals and the service of



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advertisement agent are two separate services and merely because the Services of advertisement in newspapers and periodicals (9802.4000) is exempt from payment of sales tax the appellant is not entitled to claim exemption. It is by now settled law that the exemption notifications are to be strictly construed in favor of taxing authority and against the tax payer. Since no specific exemption is available to service of advertisement agent the appellant is liable to pay sales tax on service of advertisement agent.

12. During the pendency of Appeal the appellant provided details of both the accounts maintained by it and with the help of the details the learned AC prepared the Reconciliation produced above and has rightly taxed the Service of Advertising Agent in the sum of Rs.1,732,509/=.

13. As far as imposition of penalties and default surcharge are concerned the Assessing Officer has imposed two types of penalties for one offence which is not proper and amounts to double jeopardy. There was no allegation against the appellant that it was not filing monthly returns. The allegation is that appellant has filed NULL returns. Penalty under serial No.2 and 13 of section 43 can be imposed if the appellant fails to furnish a return within due date. This is not the case of the Department. The penalty imposed in this regard cannot be imposed is set aside. As far as the penalty under serial No.3 and 13 of section 43 are concerned the same can be imposed if the department is able to establish mensrea and malafides on the part of the appellant. The appellant is regularly filing its tax returns, which clearly reflects its compliant attitude. The appellant also deposited Rupees Two Millions on 19.05.2015 with SRB even before determination of its tax liability, which also reflects its compliant attitude. As far as the Default Surcharge of Rs.227,430/= is concerned it is not known from which date the said amount was calculated. The appellant alone cannot be held responsible for the delay. The Department by passing a faulty assessment order is equally responsible.

14. In view of above the order in original is modified to the extent of payment of sales tax amounting to Rs.1,732,509/=. The order in original



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is set aside to the extent of payment of default surcharge and penalties. The excess amount if any after adjustment of Rs.1,732,509/= from the amount of rupees two million may be refunded to the appellant or may be adjusted in his future tax liability.

The appeal is disposed of in terms of para 14 above. The copy of the order be provided to the authorized representatives of the parties.


(Agha Kafeel Barik)
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi: Dated: 12.02.2018

Certified to be True Copy

Copies supplied for compliance:-

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


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy for information to:-

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