

(Closed file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KATACHI

• DB-1

APPEAL NO. AT-34/2018

M/s. Connect Marketing (Pvt) Ltd.Appellant

Versus

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

Date of Filing: 28.05.2018

Date of hearing 27.08.2018

Date of Order 28.09.2018

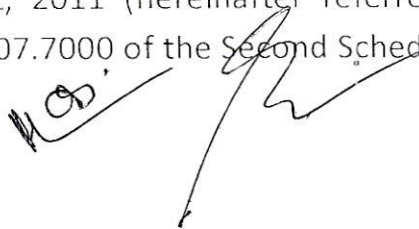
Mr. Ghulam Shah Abbasi Advocate for appellant.

Mr. Zain Manzoor, AC-SRB and Mr. Tahzeeb Ahmed, Internee Officer for respondent.

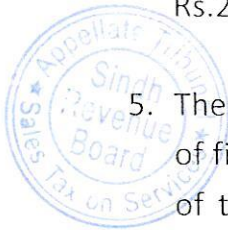
ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal No.73/2018 dated 17.05.2018 passed by the Commissioner (Appeals) in Appeal NO. 109/2016 filed by the appellant against Order in Original No. 129/2016 dated 03.03.2016 passed by the Assistant Commissioner, Unit-21 (Mr. Vickey Dhingra) SRB, Karachi.

1. The facts of the case as mentioned in the Order-in-Original are that the services provided or rendered in respect of advertising agent are chargeable to Sindh Sales Tax under section 8 of Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) read with tariff heading 9807.7000 of the Second Schedule of the Act effective from July, 2013.



2. The allegation against the appellant is that during scrutiny of SST Returns of appellant for the tax periods from July, 2013 to June, 2015 revealed that the appellant has filed NULL returns except two tax periods i.e. April and May, 2015.
3. It was further alleged that the appellant was informed vide notice dated 23.06.2015 and 01.07.2015 that Rs.212,258,768/= and Rs.30,942,638/= were credited in their two bank accounts maintained at Bank Alfalah Limited for the period from 1st July, 2013 to 30th June, 2015. M/s Hameed Associates vide its letter dated 25.07.2015 submitted written reply and copies of income tax returns and audited financial statements for the year 2013 and 2014. Another letter dated 10.09.2015 was submitted by the appellant along with documents and it was submitted that an amount of Rs.9,080,012/= was withheld by the service recipient i.e. Government of Sindh.
4. A show-cause dated 01.02.2016 was issued to the appellant to explain as to why sales tax amounting to Rs.22,034,353/= may not be assessed and recovered along with default surcharge and penalties under serial No. 3, 6d, 11, and 12 of Section 43 of the Act. After show-cause notice no reply was filed by the appellant hence the Assessing Officer passed assessment order in the sum of Rs.22,034,353/= along with default surcharge and penalty of Rs.23,978,105/=.
5. The said order of the Assessing Officer was challenged by appellant by way of filing appeal before the Commissioner (Appeals), who after reconciliation of the amount of sales tax ordered that the appellant is liable to pay an amount of Rs.1,772,134/= relating to print media along with penalty and default surcharge.
6. The appellant has challenged the said order in appeal before this tribunal. Under the order of Tribunal the Assessing Officer has again reconciled the matter and submitted his report dated 27.08.2018 according to which the



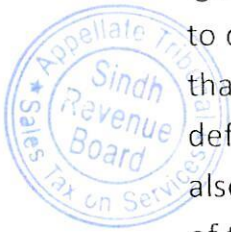
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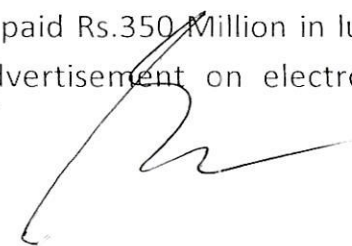
non-reconciled amount comes to Rs.1,772,134/= on account of service of advertising agent.

7. Mr. Ghulam Shah Abbasi learned advocate for the appellant submitted that the department has failed to reply the subsequent letter of Government of Sindh dated of 06.04.2017 which also covers the payment of sales tax on advertising agent services and that the said letter was issued after proper reconciliation. Mr. Abbasi then submitted that the sales tax was not charged on the invoices under misconception that the print media is exempted from chargeability of tax under section 10 and since the sales tax was withheld by recipient of service a letter was sent to Government of Sindh for making payment of sales tax. He then submitted that ultimately the burden of sales tax is to be passed on to the recipient of service and in this case the recipient has paid lump sum amount of Rs.350 million to SRB including the amount of sales tax on advertising agent services. He then referred to a letter dated 11.08.2016 addressed by Government of Sindh to SRB regarding payment made to SRB including the payment due on the appellant. He referred to re-conciliation report dated 17.05.2017 (placed before us on 16.07.2018) filed by the Deputy Commissioner, SRB Amir Ali before Commissioner (Appeals) and submitted that amount of Rs.1,772,134/- was verified by him but the Commissioner (Appeals) has ignored the same. He then submitted that details of invoices were supplied to department and the Commissioner (Appeals) wrongly stated in this order that no details were provided. He also opposed the imposing of penalty and default surcharge submitted that mensrea has not been established. He also challenged the imposition of penalty under Table No. 11 of Section 43 of the Act.

8. Mr. Zain Manzoor the learned AC Placed on record a photocopy of letter dated 16.03.2017 addressed by Information and Archives Department, Government of Sindh, to the SRB and submitted that the Government of Sindh has paid Rs.350 Million in lump sum on account of payment of sales tax on advertisement on electronic media services, whereas this case



WOS



pertains to the agency commission earned by the appellant from print media and referred to Para 12 of the order-in-original and Para 8 of the order-in-appeal. He then submitted that the appellant is required to pay Sales Tax on Services of advertising agent under tariff heading 9805.7000 for the tax periods from July, 2013 to June, 2015 @ 16% and 15% respectively. Mr. Zain Manzoor also placed on record a hand written reconciliation report dated 27.08.2018 according to which the balance tax amount on advertising agent services comes to Rs.1,772,134/=. He then submitted that the appellant is confusing the sales tax on advertising agent services with the sales tax on advertising services. He then referred to sub-section (1) of Section 9 read with sub-section (1) of Section 3 of the Act of 2011 and submitted that the appellant is a service provider of advertising agent services and is liable to pay Sindh Sales Tax. Mr. Zain then submitted that appellant was voluntarily registered with SRB on 19.04.2013. He then submitted that the service of advertising agent was brought to tax net through Sindh Finance Act, 2013 effective from 1st July, 2013. He also referred to sub-rule (5) of rule 3 of the Sindh Sales Tax Special Procedure (withholding) Rules, 2014 and submitted that the appellant did not charge/indicate the tax amount on the invoices and is liable to pay the whole amount of tax.

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

9. The dispute is in respect of commission earned by the appellant from print media for providing and rendering advertising agent services. Normally as has been seen in other cases of advertising agents that they received their commission from the newspapers and TV channels and not from advertisers. As per rules the appellant is requires to mention the sales tax on the invoices, which was admittedly not done by the appellant for the reason known to it. In this case in support of its claim the appellant has produced photo copy of letter dated 6th April, 2017 addressed by Information Department, Government of Sindh to Chairman, SRB with the title "SINDH SALES TAX ON ADVERTISEMENT SERVICES AND ADVERTISING AGENT

SERVICES PROCURED DURING JULY, 2011 TO JUNE, 2015 REQUEST FOR ISSUANCE OF CLEARANCE CERTIFICATE AND CLOSURE OF BOOKS".

In the above letter in para 3 it was stated as under:

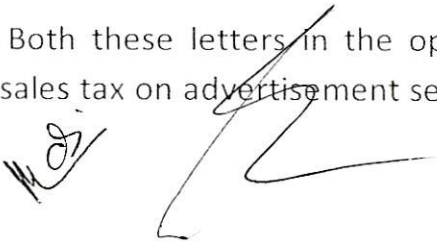
"After reconciliation, it was mutually agreed that an amount of Rs.35 crore is payable by the Information and Archives Department on account of Sindh Sales Tax on advertising services procured through above referred advertising agents/advertising agencies. Accordingly the said amount of Rs. 35 crore has been credited in SRB account through Finance Department's advice Np. FD (B&E-XIII) 2(1)/2/2015-16 dated 01.06.2016 and No. FD (B&E-XIII) 2(1)/2/2015-16 dated 29.12.2016....."

10. We have perused the photo copy of the letter dated 6th April, 2017. Though in the title of the letter the words "AND ADVERTISING AGENT" were mentioned but in para 3 of the letter the words used were "SINDH SALES TAX ON ADVERTISEMENT SERVICES". Meaning thereby that the Information Department has paid tax on advertisement service and not on advertising agent service.

11. The respondent also produced a letter dated 16th March, 2017 addressed by Information and Archives Department to Mr. Syed Waqas Zaidi, Assistant Commissioner-SRB, with the title "ISSUANCE OF SETTLEMENT CERTIFICATE REGARDING PAYMENT OF SINDH SALES TAX ON ADVERTISEMENT AND ADVERTISING AGENT SERVICES PROCURED DURING JULY, 2011 TO JUNE, 2015". In para 2 of the said letter it has been stated as under

"2. In this regard, it is informed that the information department received advertisement services from different Television Channels through advertisement agents. Prior to July, 2011 these services were also taxable services and sales tax was being collected by the Federal Board of Revenue. Since 1st July 2011 advertisement services on electronic media are subject to sales tax under the Sindh Sales Tax on Services Act, 2011 and information department was receiving such services from different TV channels. The Information Department has made the payment of Rs.350 Million on account of entire advertisement services received by it on electronic media during the period from July, 2011 to June, 2015. Therefore, nothing is outstanding against the Information Department on account of taxable advertisement service".

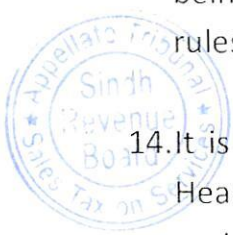
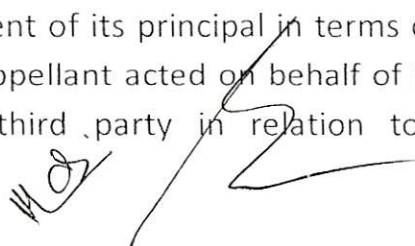
12. Both these letters in the operative part only provide about payment of sales tax on advertisement services received from electronic media and not



from print media. Even the words "ADVIRTISING AGENT" appearing in the title of both letters will not make any difference as in the body of the letters the words "ADVERTISING AGENT" have not been used. While interpreting a written instrument regarding any transection, substance is to be looked into not the form or title. Secondly while interpreting the written instrument the intention of the parties to be gathered from contents of the documents meaning thereby substance of the document must be kept in mind and not the form of the document. (Reliance is placed on the reported judgment in the case of Rasheedur Rehman Khan versus Iqbal Hussain PLD 2006 SC page 418 relevant page 420 (A) para 5). From the above two letters it is clear that the Government of Sindh has not paid any payment on account of Sindh Sales tax on advertisement agent service.

13. Sub-rule (5) of rule 3 of the Sindh Sales Tax Special Procedure (withholding) Rules, 2014 fix the responsibility upon the recipient (Government of Sindh, Information and Archives Department) of service of advertisement to deduct the sales tax as mentioned in the invoice and in case the sales tax amount is not indicated on the invoice, the recipient shall deduct the amount of sales tax from the payment made or to be made to the service provider. Apparently the Information Department, Government of Sindh being recipient of advertisement service in discharge of its liability under rules has agreed to pay the sales tax on advertisement service to SRB.

14. It is not disputed that the appellant is acting as Advertising Agent (Tariff Heading 9805.7000). 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 fall within the definition of "Advertising Agent" and is liable to pay sales tax on services of Advertising Agent as prescribed under sub-rule (6) of Rule 33 of the Sindh Sales Tax on Services Rules, 2011, which in clear terms provides that the tax involved on the services provided or rendered by an advertising agent during a tax period shall be deposited by such advertising agent in the manner prescribed in Chapter III of these rules and shall also file tax returns as prescribed in Chapter-III. It is clear that in the case of advertising agent the responsibility to deposit sales tax is upon the advertising agent and not upon the service recipient. Therefore claiming that Information Department, Government of Sindh has paid the sales tax on service of advertising agent is illogical and ill-founded.

15. In view of the above discussion the appeal has no merit and is accordingly dismissed. The copy of this order be provided to the learned representatives of the parties.


(Agha Kafeel Barik)
TECHNICAL MEMBER

Karachi


Dated: 28.09.2018

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) Office copy
- 5) Guard file.


(Justice[®] Nadeem Azhar Siddiqi)

CHAIRMAN


Certified to be True Copy

**REGISTRAR
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