

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-25/2019

Assistant Commissioner SRB, (Unit-19)
12th Floor, Shaheen Complex Building
M.R. Kiyani Road KarachiAppellant

Versus

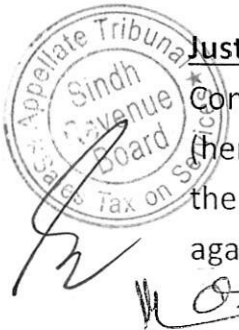
M/s Orient Communication (Pvt.) Limited
94-A, Orient House, SMCHS,
Karachi..... Respondent

Date of Filing of Appeal: 19.03.2019
Date of Hearing: 10.11.2020
Date of Order: 20.11.2020

Ms. Nadia Jalil AC-SRB for appellant
Mr. Afzal Khan Advocate for respondent

ORDER

Justice ® Nadeem Azhar Siddiqi: This appeal has been filed by the Assistant Commissioner (Unit-19), SRB Karachi challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.27/2019 dated 28.01.2019 passed by the Commissioner (Appeals) in Appeal NO. 144/2016 filed by the respondent against the Order in Original (hereinafter referred to as the OIO) No.



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294/2016 dated 30.04.2016 passed by the Mr. Vickey Dhingra, Assistant Commissioner, (Unit-21) SRB Karachi.

02. The facts as stated in the OIO were that services provided or rendered in respect of advertisement agent and advertisement services are chargeable to the Sindh Sales Tax ("SST") under section 8 read with Tariff Heading 9805.7000 and 98.02 (sub-tariff headings from 9802.1000 to 9802.9000) respectively, of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) read with Rule 33 and 34 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as "the Rules"). It was further stated that the respondent was registered with SRB bearing SNTN: No.S3064495 (hereinafter referred to as "the registered person") in respect of service of advertising agent.

03. It was alleged in the OIO that during the scrutiny of the SST returns for the tax periods February-2014, it was revealed that the registered person has provided services to M/s Culture and Tourism, Sindh (NTN: 9023000) and charged the SST thereof notwithstanding the fact that the SRB vide notification No.SRB-3-4/2/2014 dated 14-02-2014 has exempted the said services provider for celebrating the Sindh Cultural Festival 2014. This exemption was allowed on the condition that the services provider shall obtain the certificate of exemption from the Secretary, Sindh Culture, Tourism & Antiquities Department in the format provided therein. It was further alleged that the respondent had charged the Sindh Sales Tax (SST) but failed to deposit the same into Government Treasury. In the chart appearing in para 2 of the OIO the Tax Period was mentioned as February, 2014, the value of service was shown at Rs.121,168,869/= and the SST was leviable at Rs.19,387,020/=.

04. It was stated in the OIO that the respondent was provided many opportunities to pay the aforesaid amount of Rs.19,387,020/- along with default surcharge under section 44 of the Act and penalties thereof or produce the certificate duly issued by the Secretary as mandatory



requirement for such claim of exemption. However, the appellant had neither paid the SST nor provided the required exemption certificate.

05. It was also stated that the learned Deputy Commissioner, SRB (Unit-22) had passed the OIO No.102 of 2016 dated 15-02-2016 in case of M/s Culture, Tourism & Antiquities Department, Government of Sindh. In the OIO it was decided that the liability to pay SST lies on the registered person and the Government of Sindh was not qualified to withhold the aforesaid amount of SST.

06. A Show-Cause Notice (SCN) dated 25.03.2016 was served upon the respondent to explain as to why SST amounting to Rs.19,387,020/= should not be assessed and recovered alongwith default surcharge and penalties under serial No. 3, 6(d) and 11 of the Act.

07. As per the OIO the respondent had obtained various adjournments for producing the Exemption Certificate but could not produce the same. Finally the Assessing Officer ^(AO) passed OIO on the basis of available record. The AO held in the OIO that the respondent being an Advertising Agent (Tariff Heading 9805.7000) was liable to pay SST as per rule 33 of the Rules. The AO assessed the SST on the basis of gross amount received by the respondent from Government of Sindh and ordered the respondent to pay SST of Rs.19,387,020/= on the value of service of Rs.121,168,869/= alongwith default surcharge under section 44 of the Act. Furthermore, the penalties of Rs.581,611/=, 19,387,020/= and Rs.969,351/= respectively were imposed under serial No. 3, 6(d) and 11 of the Table under section 43 of the Act. .

08. The respondent had challenged the said OIO before the Commissioner (Appeals) by way of filing of an appeal which was allowed and OIO was setaside hence, this appeal by the department/appellant.

09. The department had challenged the OIA on several grounds mentioned in the memo of appeal. The crux of the grounds were that the learned Commissioner (Appeals) setaside the total amount of SST without



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considering the fact that the respondent had charged the SST in respect of advertising agency services and defaulted to pay the SST dues and that the learned Commissioner (Appeals) erroneously held that SST at 100 percent was withheld by the Sindh Culture Department.

10. The respondent in its reply submitted that Information and Archive Department, Government of Sindh (hereinafter referred as IAD-GS) vide its letter 6th April 2017 has confirmed that the services under consideration were exempted from SST in view of SRB Notification. No. SRB-3-4/2014 dated 14.02.2014. This fact was further confirmed after the receipt of payment of Rs.121,168,781/= that the recipient of services treated the services as exempt and respondent had received aforesaid amount excluding SST. It was further stated that payment of Rs.4,321,430/- and Rs.5,085,840/- were received by the respondent vide cheque numbers 1692084 and 1692085 respectively in respect of advertisement in print media i.e. newspaper. Moreover, the advertisement in print media was exempted from payment of SST.

11. The learned AC in rebuttal submitted that the respondent was registered with SRB under the service category of "Advertising Agents" (Tariff Heading 9805.7000) and no other service category was added in its profile and the whole amount involved in the OIO No. 294 of 2016 pertained to advertising agency services.

12. The AC further stated that sub-rule (3) of rule 33 of the Rules provided that the value for the purpose of levy of tax on the service of advertising agent shall be; (a) The amount of commission charged by the advertising agent. However, where any extra commission ^{was} received by the advertising agent from the media (including the print media) it shall also be included in the value of services liable to tax to be paid by him; and (b) the gross amount of value of such services would be charged where the services are provided or rendered on ^{any} ~~any~~ basis other than commission. .

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




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14. The respondent had provided services of advertising agent Tariff Heading 9805.7000 to the IAD-GS and received a sum of Rs.121,868,870/= through crossed cheque of Government of Sindh.


15. The dispute is whether the amount received by the respondent was on account of advertising services or on account of advertising agent services. It was not disputed that the respondent was an advertising agent and provided such services to IAD-GS.

16. The learned representative of the respondent in his arguments submitted that the services were provided against a commission of 5% and the entire consideration received could not be treated as commission as the amount received was paid to the TV channels for telecasting the advertisements relating to culture day celebration.

17. It is evident from the perusal of the invoices that the respondent had issued the same on account of advertisements telecasted on various TV Channels. Moreover, SST on advertising services was charged in all invoices @ 16% which was the actual amount required to be withheld by the IAD-GS being the withholding agent and recipient of advertising service under Withholding Rules and the same was not to be passed on to the respondent. However the advertisement services for the purpose of celebration of Sindh Festival-2014 was exempted from payment of SST vide SRB Notification dated 12.02.2014. In the invoices issued by the respondent the Commission on service of advertising agent was not separately mentioned nor SST was charged. The explanation offered by the representative for the appellant was that the Advertising Agent received the amount from the advertisers for payment to TV Channel and the amount received from IAD-GS were transferred to TV Channels after deducting the Commission. He also submitted that the 5% Commission from TV Channels was received from the amount wherefrom upon which the SST was already paid and the payment of SST is not required. However, if SST is demanded on this amount it would tantamount to double taxation.



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18. The AO while passing OIO treated the entire amount of Rs. 121,868,870/= as agency commission and charged tax of Rs. 19,387,020/= which was not the correct position. Apparently when the SCN was served upon the respondent the AO was not clear with regard to the services provided by it and for that reason two services i.e. "service of advertising agent and service of advertisement" were mentioned. The AO was also not aware about the quantum of commission received by the respondent from the TV Channels.

19. The other argument of the respondent that it had provided exempted services and the tax on the invoices was charged under misconception has no force since the Exemption Notification was issued on 14.02.2014 i.e. after issuance of invoices. Service of advertisement and the service of advertising agent are two separate services and the respondent was liable to pay tax on service of advertising agent. Normally in other cases of advertising agents it was observed by us that they charge their commission from the TV channels and not from the advertisers/recipient of service. As per Rules the respondent being service provider of service of advertising agent thus it was required to mention the sales tax on service of advertising agent on the invoices, which was admittedly not done by the respondent. Apparently for the reason that no invoice on account of receipt of commission on service of advertising agent was issued to TV Channels.

20. The respondent was a middleman (Advertising Agent) between the advertiser and the TV Channel. Thus the normal assignment of respondent was to release advertisement to various TV Channels on behalf of its clients (service recipients) and to receive the advertisement charges from the service recipients and to pay the same to service provider (TV Channels) after deducting its commission. The advertising agent is liable to pay tax under Tariff Heading 9805.7000 read with rule 33 (3) (a) of the Rules on the basis of commission received by it.

21. In the instant case while issuing the SCN the confusion was created by the AO since he mentioned two services i.e. service of advertising agent



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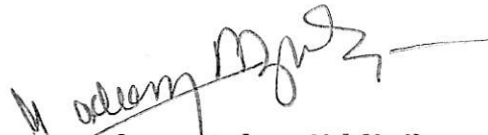
(9805.7000) and service of advertisement (9802.1000 to 9802.9000). Thus the tax was erroneously charged on the gross amount received by the respondent without inquiring into the commission earned by it.

22. In view of the above discussions we hold that the respondent had provided and rendered service of advertising agent to IAD-GS and various TV Channels. Thus the respondent was liable to pay SST on the amount of commission received by it and the IAD-GS/TV Channels to whom service of advertising agent was provided being withholding agent were liable to withhold one fifth of the SST and pass on the remaining to the respondent for payment to SRB.

23. The appeal is dismissed. However the department may inquire in the matter and if the respondent was found liable to pay the SST on service of advertising agent a fresh SCN may be issued to it for determination of tax liability and its recovery.

24. The copy of this order may be provided to the learned authorized representative of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi

Dated: 20.11.2020.

Certified to be True Copy

Copy 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.
- 5) Guard File.

Order issued on


27/11/2020

Order Dispatched on


27/11/2020
Registrar