

(Guard file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-70/2019

Assistant Commissioner (Unit-20),
Sindh Revenue Board,
12th Floor, Shaheen Complex,
M.R. Kiyani Road Karachi.....Appellant

Versus

M/s Insync Marketing & Advertisement (Pvt.) Limited
D-127, Block-4, Clifton,
Karachi.....Respondent

Date of filing of Appeal 05.09.2019
Date of hearing 14.10.2021
Date of Order 21.12.2021

Mr. Allah Rakhio Jogi, AC-(Unit-04) and Ms. Uzma Ghory, AC-DR, for appellant
Mr. Sanaullah Khan, FCA for the respondent

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the Assistant Commissioner (Unit-20), SRB Karachi challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.168/2019 dated 08.07.2019 passed by the Commissioner (Appeals) in Appeal No. 274/2016 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 772/2016 dated 29.08.2016 passed by Mr. Vickey Dhingra Assistant Commissioner, (Unit-21), SRB Karachi.

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02. The brief facts as stated in the OIO was that the service provided or rendered in respect of advertisement and advertising agent service are chargeable to the Sindh Sales Tax (SST) under section 8 read with section 3 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) and Tariff Heading 98.02, sub-tariff headings 9802.1000 to 9802.9000) and Tariff Heading 9805.7000 of the Second Schedule to the Act. It was also stated that sub-rule (2) of rule 1 of the Sindh Sales Tax Special Procedure (Withholding) Rules, 2011 (amended on 1-07-2014 vide SRB Notifications No.SRB-3-4/14/2014 (hereinafter referred to as the Withholding Rules) prescribed the persons qualified to be withholding agents and rule 3 of the Withholding Rules prescribed the responsibilities of withholding agents.

03. It was further stated in the OIO that the appellant having SNTN: No.1689993-8 was registered with Sindh Revenue Board (SRB) in respect of aforesaid taxable services.

04. It was alleged in the OIO that during the scrutiny of audited financial statements of the appellant for the year ended June, 2014 (from July, 2013 to June, 2014) and June, 2015 (from July, 2014 to June, 2015), it was revealed that the appellant had received the consideration in respect of aforesaid services to the tune of Rs.43,291,311/= wherein the SST works out to be Rs.6,608,323/= the details of which are as under:-

Table No. 01			
Description	2014-15	2013-14	Total
Commission Income	30,708,702	11,462,609	42,171,311
Other Services Net	1,120,000	-	1,120,000
Payable SST @ 15%/ 16%	4,774,305	1,834,017	6,608,323

05. It was further alleged that the appellant had received the aforesaid advertisement services for the amount of Rs.15,316,877/- wherein SST was worked out to Rs.2,388,098/- and the respondent as per sub-rule (2) of Rule 1 read with Rule 3 of the said Withholding Rules, was required to withhold and deposit the 100% SST with SRB. Details are given as under:-

Table No. 02 Withholding			
Description	2014-15	2013-14	Total
Business promotions	6,260,185	9,056,692	15,316,877
Payable SST @ 15%/ 16%	939,028	1,449,071	2,388,098

06. It was further alleged that during the scrutiny of the SST profile of the respondent it was revealed that the respondent had filed "Null" SST returns for the tax periods from July, 2013 to June, 2013 and had not paid the SST. The respondent had late filed the SST returns for the tax periods from July-2013 to August-2013, October-2013 to December-2013, January-2014 to December-2014 and January-2015 to February-2015 (19 tax periods), which attracts penalty provided under Serial No. 02 of the Table under section 43 of the Act:

07. The respondent was served with a Show-Cause Notice (SCN) dated 07.05.2016 under section 23(2) read with section 23(1A) of the Act to explain as to why the SST amounting to Rs.8,996,421/- should not be assessed and recovered along with default surcharge (to be calculated at the time of payment) under section 44 of the Act. The respondent was also called upon to explain as to why penalties prescribed under Serial No.03, 6(d), 11 and 12 of the Table under section 43 of the Act should not be imposed.

08. The respondent filed Written Reply dated 02.06.2021 through its representative and, inter alia, submitted as under that the tax period as per sub-section (95) of section 2 of the Act is one month, therefore, default is required to be pointed out period wise, the jurisdiction of withholding was with AC, Unit-22 as per Notification dated 06.07.2016 and the SCN was illegal. It was further stated that the appellant had not received any business promotion services, thus, no withholding was required.

09. The Assessing Officer (AO) passed OIO determining the SST at Rs.8,996,421/= and ordered its recovery alongwith default surcharge under section 44 of the Act. The AO also imposed penalty of Rs.563,800/= under Serial No. 2 of the Table under section 43 of the Act, penalty of Rs.499,821/= under Serial No. 3 of the Table under section 43 of the Act, penalty of Rs.8,996,421/=

under Serial No. 6 (d) of the Table under section 43 of the Act and penalty of Rs.384,160/= under Serial No. 11 of the Table under section 43 of the Act. The total of the penalties thus works out to Rs.10,444,202/=

10. The respondent challenged the said OIO by way of filing of appeal before the Commissioner (Appeals) under section 57 of the Act. The Commissioner (Appeals) after hearing concluded as under:-

“...24. The appellant has availed the tax amnesty scheme offered by SRB and made payment of Rs.2,835,022/- vide CPR S1-2158-1234993 dated 23 June, 2017, amounting to Rs.2,667,022/- vide CPR S1-20161128-1027-1248066 dated 28th November 2016. These payment also included default surcharge of Rs.95,600/- and the penalties are waived off in the manner specified above and there is no liability outstanding on part of the appellant. The appeal is disposed accordingly”.

11. The department aggrieved with the above conclusion drawn by Commissioner (Appeals) in the OIA challenged the same by filing appeal under section 61 of the Act before this Tribunal.

The learned AC-SRB submitted as under:-

i. That the OIA is bad in law and passed without properly considering the contention of the department.

ii. The OIO was passed after considering the contention of the respondent and the SST liability of Rs.8,996,421/= was rightly established.

iii. The respondent had provided advertising service to Information & Archive Department, Government of Sindh and neither the government of Sindh had deducted nor deposited the SST with SRB.

iv. The Commissioner (Appeals) wrongly, excluded an amount of Rs.3,910,725/- on account of services provided to Archive Department.

v. The Commissioner (Appeals) committed an error in mentioning the wrong amount of Rs.2,835,022/= against CPR dated 23.06.2017 instead of the correct amount of Rs. Rs.2,667,022/-. Moreover the Commissioner (Appeals) committed an error in mentioning the wrong amount of



Rs.2,2,667,022/= against CPR dated 28.11.2016 instead of Rs.168,000/= and due to this miscalculation the appeal was allowed.

vi. The AC referred to Reconciliation Report dated 19.11.2019 and submitted that the tax liability of the respondent was Rs.3,933,578/=, but the same was not considered by Commissioner (Appeals).

vii. The amnesty was not applicable to the respondent and Commissioner (Appeals) erroneously accepted the amount deposited under such amnesty.

13. The learned representative of the respondent submitted as under:-

i. The OIA was properly passed after considering the relevant facts and the SST deposited by the respondent.

ii. The liability of SST of Rs.3,910,725/-determined in the OIO was rightly waived by the Commissioner (Appeals) on account of services provided to Archive Department, Government of Sindh on the basis of letter dated 06.04.2017 of such Department, which was addressed to SRB confirming that the amount was included in the amount of Rs.35 Crores paid by Sindh Government to SRB..

iii. The Archive Department, Government of Sindh under the Withholding Rules was required to withhold entire amount of SST, which they have done and paid the amount to SRB.

iv. The SRB had already recovered an amount of Rs.6,608,323/= from the Archive Department, Government of Sindh on account of advertising services provided to it by the respondent.

v. That according to Reconciliation Report dated 16.06.2021 total outstanding of SST was Rs.4,182,210/=, out of which the SST pertaining to Archive Department was Rs.3,910,725/=. However if the same was excluded the SST liability worked out to Rs.271,685/= only.

vi. The respondent had already deposited Rs.2,940,022/= through three CPRs, which included Rs.95,500/= on account of payment of default surcharge.

vii. The Commissioner (Appeals) rightly allowed amnesty.



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viii. The respondent was ready to deposit the balance amount of Rs.271,685/= with SRB.

14. We have heard the learned representatives of the parties and perused the various Reconciliations Reports submitted by the AC-SRB and the record of the case made available before us.

15. The main dispute appears to be the amount of SST assessed on the advertising services provided by the respondent to the Archive Department, Government of Sindh. The contention of the appellant was that the Government of Sindh had paid Rs.35 Crores to the SRB on account of its withholding and the SST of Rs.6,608,323/=determined by the AO was included in that amount.

16. On hearing the parties the questions which require consideration are as under:-

- i. Who was responsible to deposit SST on advertising services?
- ii. What was the amount received by SRB from Archive Department, Government of Sindh on account of respondent?
- iii. What amount of SST was liable to be paid by the respondent?

17. The first point is "Who was responsible to deposit SST on advertising services? The point is discussed as under:-

i. The respondent was registered on 12.02.2013 under Tariff Heading 9802.5000, Advertisement on Cable T.V. network. The liability of SST determined by the AO in the OIO was Rs.8,996,421/= out of which SST of Rs.6,608,323/=(Table 01 of OIO)was on account of services provided to Archive Department, Government of Sindh and Rs.2,388,098/= (Table 02 of OIO) was on account of withholding of Business Promotion services received by the respondent.

ii. The respondent was a registered service provider and provided services to the Archive Department, Government of Sindh and private clients. By virtue of sub-section (1) of section 9 the Act the service provider was liable to pay the SST. However the SRB with the approval of the Government of Sindh in exercise of power vested in it under section 72 of

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the Act read with sub-section (4) of section 3, sub-section (3) of section 9 and section 13 of the Act had framed Sindh Sales Tax Special Procedure (Withholding Rules) 2011 (hereinafter referred to as the Withholding Rules, 2011). However after repeal of Withholding Rules, 2011 the SRB with the approval of Government of Sindh in exercise of power vested in it under section 13 of the Act read with sub-section (4) of section 3, sub-section (3) of section 9 and section 72 of the Act had framed Sindh Sales Special Procedure (Withholding Rules) 2014 (hereinafter referred to as the Withholding Rules, 2014) effective from 01.07.2014.

iii. The tax periods involved from July, 2013 to June, 2014 were covered under Withholding Rules, 2011 and the tax periods from July, 2014 to June, 2015 were covered under Withholding Rules, 2014.

iv. Sub-rule (2) of rule 1 of the Withholding Rules, 2011 specified the withholding agents. Rule 3 of the Withholding Rules, 2011 provided for the responsibility of withholding agents. Sub-rule (2) of rule 3 of the Withholding Rules, 2011 provided that a withholding agent, other than a person under the jurisdiction of LTU or a recipient of advertisement services shall deduct an amount equal to one fifth of the total sales tax shown in the sales tax invoice issued by a registered person and make payment of the balance amount to him. Sub-rule (4) of rule 3 of the Withholding Rules, 2011 provided that a person mentioned in clause (f) of rule 1, of the Withholding Rules who received advertisement services provided or rendered by a person based in Pakistan or abroad shall, deduct the amount of sales tax as mentioned in the invoice issued by the service provider from the payment due to the service provider. It is evident from this rule that the service provider of advertisement service is not responsible to collect and pay or deposit the SST and that the resident person being the recipient of advertisement service is responsible to withhold the entire amount of tax and to deposit the same with SRB.

v. For the tax periods July-2014 to June 2015 the Withholding Rules, 2014 were applicable. Sub-rule (2) of rule 1 of the Withholding Rules, 2014 specified the withholding agents. Rule 3 of the Withholding Rules, 2014 provided the responsibility of withholding agents. Sub-rule (3) of rule 3 of



the Withholding Rules, 2014 provided that a withholding agent, other than a person or recipient of the taxable services covered by clause (f) of sub-rule (2) of rule 1 of the Withholding Rules, 2014 shall deduct an amount equal to one fifth of the total amount sales tax shown in the sales tax invoice issued by a registered person and make payment of the balance amount to the service provider. Clause (f) of sub-rule (2) of rule 1 of the Withholding Rules, 2014 provided that the FBR-registered persons or SRB-Registered persons or the persons specified in clause (a), (b), (c), (d), and (e) of sub-rule (2) of rule 1 of the Withholding Rules, 2014 who receive or procure advertisement services under Tariff Heading 98.02 are the withholding agents. Sub-rule (3) of rule 3 of the Withholding Rules, 2014 provided that a withholding agent, other than a person or a recipient of taxable services covered by clause (f) of sub-rule (2) of rule 1 of the Withholding Rules, 2014 shall deduct an amount equal to one-fifth of the total amount of sales tax shown in the sales tax invoice and shall make payment of the balance amount to the service provider. Sub-rule (5) of Rule 3 of the Withholding Rules, 2014 provided that a person mentioned in clause (f) of sub-rule (2) of rule 1 of the Withholding Rules, 2014 who received the services of advertisement provided or rendered by a person registered with SRB shall deduct the amount of sales tax as mentioned in the invoice or the bill issued by the service provider from the payment due to the service provider. It is evident from this rule that the service provider of advertisement service was not responsible to collect and pay or deposit the SST and that the recipient of advertisement service was responsible to withhold the entire amount of tax and to deposit the same with SRB.

vi. In view of the above discussions it is held that the service recipient in the instant case i.e. Archive Department, Government of Sindh was responsible to withhold and deposit SST on advertising services with SRB.

18. The second point is "What was the amount received by SRB from Archive Department, Government of Sindh on account of the respondent?" The discussions on this point are as under.



i. It is evident from record that the SRB had received an amount of Rs.35 Crores from Government of Sindh pursuant to an OIO No. 99/2016 dated 11.02.2016 passed by Deputy Commissioner, Unit-22-SRB levying SST at the sum of Rs.695,633,302/= alongwith penalty of Rs.800,468,298/= and default surcharge. The Government of Sindh in lieu of this amount had paid an amount of Rs.35 Crores to SRB vide its letter dated 06.04.2017 and as per the details of payment reflected in the said letter an amount of Rs.6,608,323/= was included in the said amount of Rs.35 Crores. The SRB had passed the OIO against the Government of Sindh, in its capacity as a withholding agent being service recipient of advertising services. However since the OIO was passed on the same ground against the service recipient/withholding agent thus no further OIO could be passed against the service provider.

ii. It was not disputed that the SRB received an amount of Rs.6,908,323/= from Archive Department, Government of Sindh on account of the respondent. The same amount was determined by the AO in the OIO on account services provided by the respondent to Archive Department, Government of Sindh.

iii. In view of the above discussions it is held that the SRB had received an amount of Rs.6,908,323/= from Archive Department, Government of Sindh on account of services provided to it by the respondent.

19. The third point is "What amount of SST was liable to be paid by the respondent?" The discussions on this point are as under:-

i. The AO in the OIO determined SST of Rs.2,388,098/= on account of services received by the respondent. The respondent had deposited the following amounts through three CPR

- | | |
|----------------|-----------------------|
| (a) 23.01.2014 | Rs.105,000/- |
| (b) 28.11.2014 | Rs.168,000/- |
| (c) 23.06.2017 | <u>Rs.2,667,022/-</u> |
| | Rs.2,940,022/- |

ii. The AC submitted that the SST on the receipt of services by the respondent was Rs.2,529,597. However Mr. Sanaullah Khan, the

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Sanaullah Khan

representative of the respondent submitted that as per the latest reconciliation the amount of SST was worked out at Rs.3,910,725/- on account of services provided to Archive department, Government of Sindh and such amount of SST was duly received by SRB. However the SST on account of Private Clients was shown at Rs.271,685/- and the appellant was ready to pay such amount.

iii. The respondent was registered on 13.02.2013 under Tariff Heading 9802.5000, (advertisement on cable TV Network). The Government of Sindh had paid the amount of Rs.6,608,323/= on account of advertisement services including services of advertising agents. The AO in the SCN had invoked all sub-heading of 98.02 (98002.1000 to 9802.9000) and also invoked Tariff Heading 9805.7000 relating to advertising agents. The invoking of all sub-headings is not understandable. The AO was required to invoke the applicable sub-heading. The respondent is apparently an advertising agent and had released the advertisements to TV Channels or to Cable TV Network against commission. The Government of Sindh or the TV Channel on making payment to the respondent was liable to withhold one-fifth of the commission from the payment of the respondent and to deposit the same with SRB and pass on the remaining to the respondent for depositing the same with SRB. No details as to the rate of commission received by the respondent from the Archive Department or from the TV Channels were available on record.

iv. The advertisement on TV and Advertising Agents are two independent taxable services. Even if the SST on commission of advertising agent was included in the above amount of Rs.6,608,323/= it was to the extent of one-fifth of the SST on commission. The respondent being the service provider is required to deposit the balance amount of SST. Since the details of commission received by the respondent are not available on record we are unable to calculate the same.

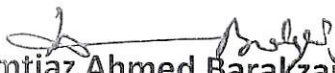
v. In view of the above discussions it is held that the respondent is liable to pay Rs.271,685/= to SRB and is also liable to pay SST on commission received on account of advertising services.

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20. In view of the above discussions the appeal is partly allowed to the extent of payment of Rs.271,685/= to SRB alongwith default surcharge and the SST on commission received by the respondent on providing advertisement services. The department after collecting appropriate material is required to serve fresh SCN to the respondent to the extent of payment of SST on commission received on advertising services.

21. The appeal is disposed of in terms of Par 20 above accordingly. The copy of this order may be provided to the learned representatives of the parties.


Imtiaz Ahmed Barakzai
TECHNICAL MEMBER


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Karachi:

Dated: 21.12.2021

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-04), SRB, for compliance

Order issued on

21/12/2021

Copy for information to:-

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

Order Dispatched on

21/12/2021


Registrar