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BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI.

DB-1

APPEAL NO. AT-76/2019

M/s Huddle Room.....Appellant

Versus

Assistant Commissioner (Unit-22), SRB, Karachi .....Respondent

Date of Filing: 21.10.2019

Date of hearing: 02.03.2020

Date of Order: 19.05.2020

Mr. Abdul Hafeez, FCA, Mr. Azizullah, ITP alongwith Mr. Salman Abid, Manager Finance for the Appellant

Mr. Muhammad Ali Keerio, AC-SRB alongwith Ms. Umi Rabbab, AC-DR for the Respondent

O R D E R

IMTIAZ AHMED BARAKZAI: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as OIA) No.184/2019 dated 20.08.2019 passed by the Commissioner (Appeals-II) in Appeal No.25/2018 filed by the appellant against the Order in Original (hereinafter referred to as OIO) No.24 of 2018 dated 13.01.2018 passed by Assistant Commissioner (Mr. Muhammad Asad Raza) SRB, Karachi.

02. The facts of the case as mentioned in the OIO are that the Appellant got voluntarily registered with SRB under Tariff Heading 9832.0000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act). It was engaged in providing or rendering services in respect of "Programme Producers and Production Houses" and were chargeable to the Sindh Sales Tax (SST) at the rate of 0.8% w.e.f. July 01, 2016.

03. It was alleged in the OIO that the Appellant had claimed/adjusted input tax of Rs.4,117,400/- for the following periods

S. No	Tax Period	Output	Input
1	June-17	806,092	639,600
2	May-17	806,092	426,400
3	Apr-17	806,612	426,400

4	Jun-16	0	525,000
5	May-16	498,400	420,000
6	Mar-16	996,800	840,000
7	Jan-16	996,800	840,000
Total		**4,910,796**	**4,117,400**

The above tax periods as per section 15(A) of the Act read with Rule 22(2) and 22(A) of Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) are chargeable at reduced rate of 10% w.e.f. July 01, 2014, 6% w.e.f. July 01, 2015 and 8% w.e.f. July 01, 2016 in view of SRB Notification No.SRB-3-4/10/2014 dated 01.07.2014.

04. A Show Cause Notice (SCN) dated 09.08.2019 was served upon the appellant under section 15(A) of the Act read with rule 22(2) and 22(A) of the Rules. The Authorized Representative on behalf of appellant filed a letter dated 11th September, 2017 alongwith copy of drama agreement with M/s Showcase Communication, invoices against which input was claimed, bank statement and copy of income tax returns. It was contented that the appellant was registered in the category of "Programme Producers and Production Houses" but were also engaged in providing the services "Business Support" and all invoices issued by them were for the services rendered in respect of "business support" and not for production house, therefore the appellant charged the SST amounting to 13% instead of reduced rate on the purchases, so the input was allowable for the service. They requested for adjournments which were allowed up to 26th September, 2017 but on due date no compliance was made. Again on 10.10.2017 a letter was received from its Authorized Representative M/s UHY Hassan Naeem & Com. For extension of time for 30 days but even after 09.11.2017 no compliance was made nor was any adjournment was sought.

05. The Assessing Officer (AO) passed the OIO on the following grounds:-

(a) *The services provided or rendered in respect of "programme producer and production houses" were chargeable to the SST at the rate of 08% as notified vide SRB notification No.SRB-3-4/8/2013 dated 1-7-2013. In respect of section 15A (j) and 15A (jj) read with Rule 22A (viii) and 22A (viiia) of the said Rules-2011. It was prescribed that the goods or services used or consumed in a service "liable to sales tax at ad valorem rate lesser than the standard rate (i.e.13%) or at specific rate or fixed rate" or at such other rate not based on value, the input tax credit was not*

allowable. Furthermore, in fourth column i.e. 'conditions and restrictions' of the said notification No.SRB-3-4/10/2014 dated 01-07-2014), the legislature had specified that the "input tax credit/ adjustment shall not be admissible" against the service of "Programme Producers and Production Houses". However, the registered person had adjusted/claimed the inadmissible input tax credit.

(b) The registered person has contended that *"All the invoices issued by our clients in this period is not production house because we have just purchased the drama from the showcase communication and further sold it to the Mindshare Communication after applying our profit margin on the cost. We are just intermediary and sell programme from one party to other party. Accordingly we charged sales tax at normal rate 13%. Therefore we claim input tax against out output tax."* This contention is untenable which is evident from the perusal of the documents provided by the registered person which reveals that the services received by the registered person pertained to "Programme Producer and Production Houses" and same is taxable at the reduced rate of 8%, therefore, even if the SST is charged at the standard rate (i.e. 13%) the input adjustment shall remain disallowed and the 5% excess tax charged (i.e. 13% - 8% = 5%) shall be recoverable, reference in this regard is made to section 16 of the Act which states that, any person who has collected or collects any tax or charge, whether under misapprehension of any provision of this Act or otherwise, which was not payable as tax or charge or **which is in excess of the tax** or charge actually payable and the incidence of which has been passed on to the person to whom the service is provided, shall pay the amount of tax or charge so collected to the Government.

06. The AO thus disallowed the input of the appellant and added Rs.4,117,400/- alongwith default surcharge under section 44 of the Act. Furthermore penalty of Rs.250,870/- under clause 11 of the table under section 43 of the Act and penalty of Rs.4,117,400/- under serial No.6(d) of the table under section 43 of the Act were also added.

07. The appellant challenged the said OIO by filing appeal before Commissioner (Appeals) who after hearing upheld the disallowance of input tax at Rs.4,117,400/- and penalty of Rs.205,870/- under clause 11 of table under section 43 of the Act. However he deleted the penalty of Rs.4,117,400/-

under serial No.6(d) of the table under section 43 of the Act, hence this appeal by the appellant.

08. The learned representative of the appellant submitted the following arguments that:

(i) The appellant was voluntarily registered under Tariff Heading 9832.0000 (program producers and production house) chargeable to tax at the statutory rate of 13% and there was no bar for claiming input tax adjustment. Moreover the SRB had issued Notification dated 01.07.2013 notifying reduced rate of tax of 10% and disallowed input tax adjustment. It was submitted that the reduced rate of tax without allowing input tax was against the provisions of law.

(ii) The supplier of the appellant was charging tax at the statutory rate as such the appellant was entitled to claim input tax adjustment and in support photo copy of notification dated 13.07.2013 was placed on record. This showed the working Tariff of Taxable service wherein in column No.4 it was evident that the input tax credit/ adjustment shall not be admissible meaning thereby that those persons who paid tax at reduced rate were not entitled to claim input tax adjustment.

(iii) During the tax periods involved the appellant had executed four agreements for purchase of already prepared/produced drama from its makers with right to sell onward. Due to this reason the service category of Business Support Service (9805.9200) was added subsequently to voluntarily registration under Tariff Heading 9832.0000 (Programme Producers and Production House).

(iv) The Notification dated 1st July, 2014 does not put any restriction nor it requires the appellant to pay statutory rate of tax. However it has only provided that those persons who pay reduced rate of tax would not be entitled to claim input tax adjustment. It was submitted that the appellant had paid tax @ 13% after adjustment of input tax. However if it was finally determined that the tax was payable at the reduced rate the appellant would be entitled for refund of excess amount of tax paid.

(v) There was no other company registered under the Companies Ordinance, 1984 and in all the four agreements of the AOP was wrongly defined as a company duly incorporated. It was submitted that all notifications of reduced rates were issued under sub-section (2) of

Section 8 of the Act and the provisions of sub-section (60A) of Section 2 of the Act cannot override the effect of the charging section. He also referred to clause 19A of the General Clauses Act, 1956 and submitted that without publication of notification in the official Gazette the same could not be applied. It was further submitted that the notification was issued under sub-section (2) of Section 8 of the Act with some restrictions and conditions. However since the appellant could not fulfill the conditions thus sub-section (1) of section 8 of the Act was not applicable.

9. The representative of the respondent was directed by the Tribunal to place on record the gazette copy of notification dated 13.07.2013 and subsequent notification dated 01.07.2014 which was referred to in the bottom of later notification, alongwith approval of the Government. The AC was directed to explain as to how the notification which was published in the official Gazette on 23.01.2020 could be applied retrospectively.

10. The learned representatives of the respondents submitted the following arguments:

(i) The activities of appellant do not fall under Tariff Heading 9805.9200, Business Support Service. Such notices were served upon the appellant on 22.05.2017 and 24.07.2017 but no compliance could be made. Evidence of receipt of notices by the appellant was placed on file.

(ii) The appellant was not entitled to claim input tax adjustment as the tax on program producer and production house was subject to reduced rate of tax. The appellant contended that it was involved in purchase and sale of TV Dramas for the tax periods involved. However it was contended that it was not involved in producing programmes and for the reason the appellant got modification/voluntarily registration under Tariff Heading 9805.9200, Business Support Service.

(iii) The nature of economic activity of appellant was programme producer which falls under Tariff Heading 9832.0000 and is chargeable to Sindh Sales Tax at reduced rate and no input tax adjustment was admissible. It was submitted that the addition of Business Support Service (9805.9200) was made **on 04.06.2018** after the tax periods

involved and thus could not be retrospectively applied. Regarding Clause 19-A of General Clauses Act, the AC submitted that SSToS Act, 2011 was a Special Law and the provisions of General Clauses Act, 1956 were inapplicable. He also submitted that SRB had completed all codal formalities for publication of Notification dated 1st July, 2014, but the same was not published within time due to negligence of the Superintendent, Sindh Government Printing Press, Government of Sindh. Regarding late publication of Notification dated 01.07.2014 published in the official Gazette dated 23.01.2020 he referred to clause (60A) of Section 2 of the Act inserted vide Sindh Finance Act XXIV of 2016 with retrospective effect since 1st day of July, 2011 and submitted that by virtue of this provision the notification would take effect from the day specified therein, notwithstanding its publication in the official Gazette.

(iv) The assessment was made against Association of person which was voluntarily registered with SRB on 26.01.2016 under Tariff Heading 9832.0000 (Programme Producers and Production Houses). Moreover, he further submitted that the appellant was also registered as AOP with FBR. The Four Agreements provided by the appellant related to that of a company duly incorporated under the provisions of Companies Ordinance, 1984 and has no relevance with the appellant which is an AOP.

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

12. The case of the appellant is that it had not provided services of Programme Producers and Production Houses, Tariff Heading 9832.0000 but instead it had provided services of Business Support, Tariff Heading 9805.9200. However in support of its contention the appellant produced photocopies of the agreements for purchase and sale of programmes with the right to resell the same. The appellant had also claimed that its supplier had charged SST at the statutory rate as such the appellant was entitled to claim input tax adjustment. The appellant further contended that the Notification dated 1st July, 2014 does not put any restriction and it does not require the appellant not to pay statutory rate of tax. However it only provided that those persons

who pay tax at reduced rate would not be entitled to claim input tax adjustment.

13. The Respondent despite providing the copies of agreements for purchase of programmes by the appellant charged SST on services of Programme Producers and Production Houses, Tariff Heading 9832.0000. Before us the respondent challenged the said agreements by pleading that the Appellant was an Association of Persons (AOP) and was also registered with FBR under such category whereas in the Agreement the appellant was described as Company incorporated under the Companies Ordinance, 1984.

14. The appellant got voluntarily registration under service category of Programme Producers and Production Houses, Tariff Heading 9832.0000 on 26.01.2016 modified on 04.06.2018 under service category of Business Support, Tariff Heading 9805.9200. The tax periods involved related to January, 2016, March, 2016, May 2016, June 2016 and April, 2017 to June, 2017. The SCN was issued on 09.08.2018 much before the modification of Tariff Heading dated 04.06.2018. Moreover before issuance of SCN the appellant was informed vide letters dated 22.05.2017 and 24.07.2017 regarding non-admissibility of input tax on service of Programme Producers and Production Houses, Tariff Heading 9832.0000 under section 15(A) of the Act read with rule 22A of the Rules (without mentioning the relevant provisions of the Act and the rules) on the pretext that the service of Programme Producers and Production Houses, Tariff Heading 9832.0000 was taxable at the reduced rate of tax.

15. The points raised by the parties worth consideration are as under:-

(i) Whether the Notification dated 01.07.2014 could be implemented without its publication in the Official Gazette as provided in clause 19A of the General Clauses Act, 1956.

(ii) Whether Notification dated 01.07.2014 is mandatory in nature or the same is directory giving option to the tax payers to pay statutory rate of SST and claim input tax adjustment as provided under section 15 of the Act.

(iii) Whether the appellant who is registered with SRB as AOP can transact agreement with parties as company registered under the Companies Ordinance, 1984 and in the capacity of Proprietorship concern.

16. Point No.1. Whether the notification dated 01.07.2014 could be implemented without its publication in the official Gazette as provided in clause 19A of the General Clauses Act, 1956.

The following points are elucidated on the basis of facts and law as under:-

a) The respondent had disallowed input tax adjustment on the strength of SRB Notification No. SRB-3-4/10/2014 Dated 01.07.2014 issued for amending the Notification No. SRB-3-4/08/2013 Dated 01.07 2013. The said Notification was published in the Official Gazette on 14th January, 2020. Regarding late publication of Notification dated 01.07.2014 the respondent referred to clause (60A) of Section 2 of the Act inserted vide Sindh Finance Act XXIV of 2016 with retrospective effect since 1st day of July, 2011and submitted that by virtue of this provision the notification would take effect from the day specified therein, notwithstanding its publication in the official Gazette. The Notification is silent with regard to date of enforcement. Non publication of Notification in the Official Gazette was already decided by this Tribunal in the case of M/s Pakistan Mobile Communication Private limited versus Commissioner (Appeals), SRB, Appeal No. AT-25/2016 as under:-

17. (vi) The Notification was not published in the official gazette as no such copy could be produced despite numerous directions. Section 19A of the General Clauses Act, 1956 applicable to province of Sindh provides that Rules and Orders, etc. to be published. In the original section 15 of the Act there was no condition of publication on the official gazette, therefore the provision of Section 19-A General Clause Act was applicable. It was held in the reported judgment in the case of Ummatullah Versus Province of Sind. PLD 2010 Karachi, 236 as under:-

"17. General Clauses Act 1897 and Sindh General Clauses Act 1956 were enacted with object to shorten the language used in Federal and Provincial Statutes respectively passed by the respective legislature. Provisions of General Clauses Act, unless a different intention appears in any statute are to be read as integral part of any statute (see section 31 of the General Clauses Act 1897 and section 28 of the General Clauses Act 1956).

In the same judgment it was further held as under:-

"21.....Merely issuing a notification without publication in official Gazette and keeping it in the closet shrouded in the secrecy is opposed to public policy and law, otherwise, it would add another tool of oppression in the arsenal of the public functionaries, who may arbitrarily or selectively confer or impinge any privilege, benefit or right of a person at their whims and fancies for extraneous considerations".

In the reported case of Chief Administrator Auqaf versus Mst. Amna Bibi, 2008 SCMR 1717 it has been held as under:-

"8....."It has been laid down by the superior Courts that a notification which curtails or extends rights of citizens will take effect from date of its publication in Gazette and not from any prior date.

b) In the instant case the Notification 01.07.2014 has curtailed the right of the appellant to claim input tax adjustment as provided under section 15 of the Act. Section 15 placed a restriction on SRB Board to issue notification in the official Gazette. It is a settled principle of law that things are required to be done strictly according to law, or it should not be done at all. In the instant case section 15 of the Act provides that the SRB may place conditions and restrictions on the registered person to claim adjustments, deductions and refunds with the approval from the Government. In the reported case of Assistant Collector Customs versus M/s Khyber Electric Lamps, 2001 SCMR 838 it has been held as under:-

"4.....It is well settled proposition of law that a thing required by law to be done in a certain manner must be done in the same manner as prescribed by law or not at all".

c) The respondent's representative referred to sub-section (60A) in support of his contention stating that the publication in the official gazette was not necessary. However it is pertinent to mention ed that General Clauses Act is applicable to all provincial laws as held in Ummatullah Versus Province of Sind, PLD 2010 Karachi, 236, supra. The notification curtailing the rights of citizens cannot be implemented unless published in the official Gazette as held in reported case of Chief Administrator Auqaf versus Mst. Amna Bibi, 2008 SCMR 1717, supra.

d) There is an apparent conflict between sub-section (60A) of section 2 and sub-section (1) 0f section 15 of the Act. Sub-section (60A) of section 2 of the Act was inserted by Sindh Finance Act, 2016 effective from 01.07.2011 and provides that *"notification in the official Gazette means a notification issued under this Act shall be effective from the day specified therein, notwithstanding the fact that the issue of the official Gazette in which such notification appears is published at any time after that day"*, whereas sub-section (1) of section 15 of the Act as amended by Sindh Finance Act, 2014 effective from 07.07.2014 provided that *"The Board may, [by notification in the official Gazette, and].* Both these amendments were made in the Act before the issuance of the SCN. The amendment in section 2(60A) of the Act was made after the tax periods involved in this appeal, whereas the amendment in section 15 of the Act was made prior to the tax periods involved in this appeal. The Notification does not provide any date of its enforcement or implementation except that on the top of the Notification the date was mentioned as 01.07.2014.The provisions of law are to be interpreted in harmony and in a manner to reconcile inconsistent provisions. However, if no conciliation is possible the later provision will prevail as held in Mst. Sakina Bibi versus Crescent Textile, PLD 1984 SC 241 as under:-

"....Page-251-H. There is no need to repeat here what has been stated earlier when discussing the scope of section 81. Thus, section 73 would have to be read with and subject to section 81 as interpreted above and not independent of if....".

"....Page 252 Citation J&K. Before parting with this judgment, it is necessary to observe that if the controversy would not have admitted the afore-discussed solution, the following well known rule of interpretation would have been applied with same conclusion:- when co-ordinate sections are inconsistent with each other and attempt to conciliate them fails then generally the latter is to override the earlier. In other words applied to the present controversy, the provision regarding implied repeal will control and override the earlier part regarding non-payment of compensation and the same will operate only subject to this provision...."

In view of the above discussions the Point No. (i) is answered in positive that the Notification without its being published in official Gazette could not be implemented.

17. Point No. 2. Whether Notification dated 01.07.2014 is mandatory in nature or the same is directory giving option to the taxpayer to pay statutory rate of SST and claim input tax adjustment as provided under Section 15 of the Act.

The following points are elucidated on the basis of facts and law as under:-

a) The Notification dated 01.07.2014 was issued under sub-section (2) of section 8 of the Act. It provides that the SRB with the approval of the Government may, subject to such conditions and restrictions as it may impose, by notification in the official Gazette, declare that in respect of any taxable service provided by a registered person or a class of registered persons, the tax shall be charged, levied and collected at such higher or lower rate or rates as may be specified in the said notification for any given tax period.

b) The Board under the delegated power was empowered to impose conditions and restrictions subject to notification in the official Gazette. The Notification dated 01.07.2014 was published on 14th January, 2020. The said original Notification dated 01.07.2013

provided that in exercise of the powers conferred by sub-section (2) of section 8 of the Act the SRB, with the approval of the Government, is pleased to declare that the tax on the services specified in column (2) of the Table below, falling under the tariff heading specified in column (1) of the Table, shall be charged, levied and collected at the rate specified in column (3) of the Table subject to the limitations, conditions and restrictions specified in column (4) of the Table namely. The relevant portion of the notification is reproduced below:-

Tariff Heading No.	Descriptions of service	Rate of Tax	Conditions & restrictions
(1)	(2)	(3)	(4)
9832.0000	Services provided or rendered by programme producers and production houses	10%	Input tax credit/ adjustment shall not be admissible

c) The statutory rate of tax for the relevant tax periods was 13% and the reduced rate of tax was 8%. However there was no clear restriction or condition in the notification that the statutory rate of tax was not payable. It appeared from the impression of the language that in case of payment of tax at reduced rate Input tax credit/adjustment shall not be admissible. It is not disputed that the supplier of the appellant had charged SST from the appellant at the statutory rate which was not objected by the department at any point of time and the excess amount of tax if any was never refunded or offered to be refunded. If the appellant was liable to pay tax at reduced rate the excess tax charged by the supplier of the appellant and deposited with SRB was liable to be refunded. The Department instead of refunding the excess amount of tax received from the appellant has again claimed the input tax adjusted by the appellant and this practice amounts to double jeopardy which was not permissible under the Constitution of Pakistan.

d) The sales tax on services is a Value Addition Tax (VAT) and the adjustment of the input tax paid from the output tax is a necessary ingredient without such adjustment the same cannot be treated as VAT. Thus, sales tax is collected at each stage of value

addition and the amount of input tax paid is adjustable against the output tax payable at the next stage of supply. Thus, the principle of input adjustment is fundamental to the scheme of the levy. The levy of tax in VAT mode was dealt with by the High Court of Sindh in the case of M/s Pakistan Beverage Limited, Karachi versus Larger Taxpayer Unit, (LTU), 2010 P T D 2673 and at page 2680 held as under:-

> *"10. The first point keep in mind is that the Sales Tax Act as currently in force is a value added tax, or VAT. When sales tax is levied in VAT mode, it is charged at each stage in the supply chain as the goods move from the point of origin to the ultimate destination. At each stage, the sales tax is paid on the value added by the supplier concerned.*
>
> *This is done by taking the sales tax charged by the supplier for the goods sold by him (known as the output tax) and subtracting from it the sales tax paid by him for the goods purchased by him (known as the input tax)... If the difference (i.e., output tax minus input tax) is positive over the relevant tax period, i.e., the output tax is more than the input tax, that means that the supplier has to pay the difference to the State. If the difference is negative (i.e., output tax is less than input tax), their supplier is entitled to a refund of this amount, or its adjustment in the next tax period(s). It will also be noted that in respect of each transaction, other than the first and the last, the sales tax involved has a dual characteristic. For the person making the supply (i.e., the seller) it is his output tax. For the person acquiring the goods (i.e., the buyer) it is his input tax. These are but two sides of the same transaction.*

In the above judgment a passage was quoted from the judgment of the Constitutional Court of South Africa describing the VAT mechanism in somewhat more detailed manner. In Metcash Trading Ltd. V. Commissioner of South African Revenue Service and another 2002 (4) SA 317 it is described in the following terms:---

> *"VAT is, as its name signifies, a tax on added value. It is imposed at each step along the chain of manufacture and distribution of goods or services that are supplied in the country in the course of business; and it is calculated on the value at the time of each such step. . . .*

Although the tax is payable on a wide variety of services the present discussion can be confined to the facts of this case, which involves the providing or rendering of services. The basic idea of VAT is that it is calculated on the value of each successive step as services move from hand to hand along the chain from their original source to their ultimate user.

e) It is now well established that doubt if any is to be resolved in favour of tax payer and if two interpretations are possible the interpretation favoring tax payer should be adopted. In the instant case the view point of the department was that in view of Notification dated 01.07.2014 the taxpayer was liable to pay tax at reduced rate and was not entitled to claim input tax adjustment. The view point of the appellant was that the Notification does not barr a tax payer from payment of tax at statutory rate and since the tax was paid at statutory rate the input tax adjustment was rightly claimed. In the reported case of Pakistan through Secretary finance versus Messrs Lucky Cement, 2007 SCMR 1367 it was held as under:-

> "12. .....even if the interpretation placed upon the said statutory provision by the learned counsel for the appellants was equally possible, or any ambiguity existed therein, it is now settled that in such situation interpretation favorable to the tax payer is to be preferred".

f) In view of the above discussion it is held that the Notification is not mandatory and is directory and those taxpayers who opted for payment of tax at reduced rate are not entitled to claim input tax adjustment and those tax payers who had paid tax at statutory rate are entitled to claim input tax adjustment.

18. Point number 3 whether the appellant who is registered with SRB as AOP can transact agreement with parties as company registered under the Companies Ordinance, 1984 and in the capacity of Proprietorship concern.

The following points are elucidated on the basis of facts and law as under:

a) There was no material before the Assessing Officer to establish that the appellant is a service provider of Programme Producer and Production House. The only material available with the Assessing Officer was in the shape of invoices and four agreements and the details of same are as under:-

(i) Agreement between Syed Mukhtiar Ahmad and appellant (described as Company under Companies Ordinance, 1984).
By this agreement the appellant had acquired the perpetual airing rights of program "Jannat" consisting of 40 episodes of minimum 22 minutes each with the right to sell the rights of exhibition of the Programme or release through VCD, DVD, Video Cassette, Mobile TV, DTH, VHS or through Cable TV Network to any person.

(ii) Agreement between Appellant (described as Company under Companies Ordinance, 1984) and Group M. Pakistan Limited.
By this agreement the appellant had provided the perpetual airing rights of program "Jannat" consisting of 40 episodes of minimum 22 minutes each with the right to sell the rights of exhibition of the Programme or release through VCD, DVD, Video Cassette, Mobile TV, DTH, VHS or through Cable TV Network to any person.

(iii) Agreement between Showcase Communications and appellant (described as Company under Companies Ordinance, 1984).
By this agreement the appellant had acquired the perpetual airing rights of program "Main Kaisay Kahoon" consisting of 24 episodes of minimum 40 minutes each with the right to sell the rights of exhibition+on of the Programme or release through VCD, DVD, Video Cassette, Mobile TV, DTH, VHS or through Cable TV Network to any person.

(iv) Agreement between Appellant (described as Sole Proprietorship) and Mindshare Pakistan (Private) Limited.
By this agreement the appellant had provided the perpetual airing rights of program "Main Kaisay Kahoon" consisting of

of 24 episodes of minimum 40 minutes each with the right to sell the rights of exhibition+on of the Programme or release through VCD, DVD, Video Cassette, Mobile TV, DTH, VHS or through Cable TV Network to any person.

b) The learned AC before us disputed and challenged the above agreements by submitting that the appellant acquired registration as an Association of Person (AOP) and not as company or proprietorship concern and the agreement made by the appellant as company under the Companies Ordinance, 1984 and as sole proprietorship concern cannot be relied upon. The contention of the learned AC has force since in none of the agreements the appellant was described as AOP, and the appellant has failed to clarify its position.

c) The Association of persons has been defined under subsection (13) of Section 2 of the Act, whereas the company has been defined under subsection (28) of Section 2 of the Act. Both these entities are legally different and appellant being AOP cannot enter in agreement with the parties as company under the Companies Ordinance, 1984. This would totally vitiate the nature of transaction.

d) The Respondent duly confronted the appellant that its activities did not fall under Tariff Heading 9805.9200 Business Support Services. It has been mentioned in the OIO that such notices were served upon the appellant on 22.05.2017 and 29.07.2017 but no compliance could be made by it, and evidence of service of notices has been produced by the Respondent. Moreover the assessment as per OIO was completed more or less on ex-party basis which is evident from para 12 and 13 of the OIO. The OIA was also decided ex-party on the basis of written arguments of the appellant and it was mentioned that the appellant was not interested in personal hearing and it merely wanted to gain time as is evident from para 9 of the OIA. Thus the case on both the stages of OIO and OIA was completed ex-parte due to alleged non attendance by the appellant.

In view of above discussion the Point No.(iii) is answered in the negative.

19. Considering the above facts and law it is evident that since the orders relating to initial assessment and first appeal has been passed on ex-parte basis thus this Tribunal deems it appropriate to remand back the case to Assessing Officer who should reexamine the case after providing proper opportunity to the appellant and examine the agreements and Tariff Heading and decide the service category under which the appellant falls and complete the assessment within 60 days.

20. The copy of order may be provided to the learned representatives of the parties.

Nadeem Azhar Siddiqi
Chairman

Imtiaz Ahmed Barakzai
Member Technical

Karachi, Dated: 19.05.2020

Copy for compliance:

01. The appellant through authorized Representative.
02. The Assistant Commissioner (Unit-), SRB, Karachi.

Copy for information to:-

03. The Commissioner (Appeals), SRB, Karachi
04. Office Copy.
05. Guard File.

Certified to be True Copy

APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on 10/06/2020

Registrar

Order Dispatched on 10/06/2020

Registrar