

(Guard file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI
DOUBLE BENCH

APPEAL NO. AT-34/2020

M/s Next Tier (SNTN: 2517008-2)
B-F-20/1, Ch. Khaliqz Zaman Road,
Block-9, Clifton, Karachi.....Appellant

Versus

Assistant Commissioner (Unit-19),
Sindh Revenue Board,
6th Floor, Shaheen Complex,
M. R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal 07.10.2020
Date of hearing 02.11.2021
Date of Order 31.01.2022

Mr. Ghulam Shah Abbasi, advocate for appellant

Mr. Shoaib Iqbal, AC-(Unit-22), for SRB/ respondent

ORDER

(Muzaffar Ahmed Barakzai): This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 65/2020 dated 06.08.2020 passed by the Commissioner (Appeals) in Appeal No. 32/2017 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 54/2017 dated 09.03.2017 passed by Mr. Aamir Ali, Deputy Commissioner, (Unit-28) SRB Karachi.

02. The brief facts as stated in the OIO were that the services provided or rendered in respect of advertisement were chargeable to the Sindh Sales Tax (SST) under section 8 read with Tariff Heading 98.02 and the Sub-Tariff Heading from 9802.1000 to 9802.9000 of the Second Schedule to the Sindh







Sales Tax on services Act, 2011 (hereinafter referred to as the Act) with effect from July 01, 2011. It was further stated that the appellant was registered with SRB w.e.f. 30-05-2012 in respect of aforesaid services.

03. It was alleged that on scrutiny of the SST profile it was revealed that the appellant had filed Null SST returns for the tax periods from July to August-2011, May-2012 to November-2013 and January-2014 to September-2015 (thirty tax periods). It was further alleged that from further scrutiny it was revealed that the appellant had failed to e-file the SST returns for the periods from September-2011 to April-2012 (eight tax periods). The appellant had declared output tax of Rs. 176,000/- (against value of services of Rs.1,100,000/-). Whereas the bank statements of the registered person showed credits entries of Rs.508,098,782/- during the period July-11 to June-15 (forty eight tax periods).

04. The appellant was served with Show Cause Notice (SCN) dated 22nd December, 2015 to explain as to why the SST amounting to Rs.81,295,805/- (being 16% of Rs.508,098,782/-) may not be assessed under section 23 of the Act and recovered along with default surcharge under section 44 of the Act. The appellant was called upon to explain as to why penalties may not be imposed as prescribed under Serial No.2, 3, 6(d), 11 and 12 of the Table under section 43 of the Act for violation of various provisions of the Act and the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules). In response to the SCN Ms. Kianat Zaheer, owner / appellant appeared for hearing and submitted that her business was not in operation since 2014. However the appellant was directed to substantiate her claim for closure of business, and produce financial statement alongwith income tax returns for the relevant tax periods. The representative on behalf of the appellant appeared on the next date and submitted that out of three accounts one did not pertain to the appellant and submitted working of two bank accounts. The appellant after taking various adjournments submitted written reply dated 01.06.2016 and challenged the issuance of SCN and submitted that the department had failed to discharge the burden that credit entries were essentially of a taxable character. It was also challenged that no specific Tariff Heading was mentioned in the SCN to which the alleged services pertained.

05. The department issued final hearing notice dated 01.06.2016 wherein it was also classified in registration profile that the appellant had declared principle business activity as "Advertisement On cable T.V Network Advertising On Poles, Advertising on Billboards and Other Advertisement on web/ Internet etc.". However the specific Tariff Heading was not mentioned. The appellant during the hearing before the Assessing Officer (AO) produced some invoices which showed that taxable advertisement services were provided. The AO prepared the Reconciliation of all eight bank accounts referred in the SCN and excluded four bank accounts since the same were related to other business of the proprietor i.e. M/s Purple Pink and Alishba's Collection. The Reconciliation showed that total credit entries amounted to Rs.568,917,217/= out of which Rs.147,614,545/= were deducted on account of internal transfers and others calculating the revenue receipts (value of services) at Rs.156,005,587/=.

06. The AO while determining the SST of Rs.24,675,870/= concluded that the appellant had not denied the fact that taxable advertisement services were provided. However despite service of notice under section 52 (1) of the Act no record could be produced.

07. The AO passed OIO determining the SST of Rs.23,851,870/- (24,675,870/- less Rs.176,000/- already deposited with SRB and Rs.648,000/- deposited with FBR) and ordered deposit of SST alongwith default surcharge under section 44 of the Act. The AO also imposed penalties of Rs.480,000/= (Rs.10,000/= X 48 months) under Serial No. 2 of the Table under section 43 of the Act, Rs.1,192,593/= (5% of the unpaid principle tax amount of Rs.23,851,870/=) under Serial No. 3 of the Table under section 43 of the Act, and Rs.23,851,870/= (100% of the tax payable) under Serial No. 6 (d) of the Table under section 43 of the Act.

08. The appellant challenged the OIO before Commissioner (Appeals), SRB by filing appeal under section 57 of the Act. The Commissioner (Appeals) while dismissing the appeal held in para 23 of the order as under:-

"....23. In view of the foregoing facts and points of law I am of the considered opinion that the instant Appellant has caused the SSTS

worth Rs.23,851,870/- to be evaded/ short-paid in violation of section 3 & 8 read with 9, 17 ibid further read with Rules-34 of the Rules, 2011, by way of 'non-charging' thereof on the sales invoices issued by him to his service recipients in respect of 'Advertisement on Billboard/ Poles' (9802.6000 & 9802.7000 of the 2nd Schedule ibid) during the tax periods July to August 2011, May 2012 to November 2013 and January 2014 to September 2015 & September 2011 to April 2012. As regards, the impugned inward entries in his bank accounts, it is reasonably proved (post-reconciliation thereof) that these amounts were earned by the Appellant by rendering/ providing the above-noted taxable services (for which he issued invoices himself but never charged any SSTs thereon, in violation of the Act, 2011 and the Rules made thereunder). Appellant's claim regarding these amounts being 'investor's money/ loans etc.' was also not proved as no reasonable evidence thereof was furnished by the Appellant before me. The facts and circumstances transpiring as above prove Appellant's misstatements before this forum and establish his malafide intention/ mens rea beyond any doubt. Appellant's non-filing of monthly sales tax returns' and/ or his 'filing of incorrect and untrue returns' of the tax-periods mentioned in the impugned OIO, also stand admitted/ proved. I therefore, do not see any reasons to modify the default surcharge and penalties imposed upon him vide the impugned OIO".



Resultantly an appeal was filed before this Tribunal.

09. The learned advocate for the appellant Mr. Ghulam Shah Abbasi submitted as under:-

- i) The appellant was not doing advertisement business and had not provided advertisement services but used to acquire billboards sites from DMC/ KMC and Cantonments Boards by participating in the auctions and sub-let the sites to its clients/ advertisers against the payment of rent.
- ii) The tax periods involved in the appeal were from July-2011 to June-2015 and during these periods renting of Immovable Property was not taxable.

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- iii) The responsibility to withhold entire SST on advertisement services was on recipients of advertising service and even if the appellant was doing advertising business it was not liable to collect and pay SST from the service recipients.
- iv) The assessment order was passed only on the basis of entries available in the various bank accounts of the appellant including the personal bank accounts of the appellant.
- v) The bank accounts which were pertained to other entities were also included for charging SST.

10. The learned AC-SRB Mr. Shoaib Iqbal submitted as under:-

- i) The appellant got voluntarily registration on 30.05.2012 for principal activity of Advertisement on Billboards under Tariff Heading 9802.7000.
- ii) The appellant in response to SCN never challenged that it had not provided taxable services of advertisement.
- iii) The appellant has not pleaded before the forums below that it had provided bill board sites to advertisers on rental basis. This plea was concocted to avoid the payment of due SST.
- iv) The appellant deliberately filed Null SST returns and failed to file SST returns despite providing taxable services.
- v) The appellant despite getting voluntarily registration failed to charge, collect and deposit the SST with SRB in violation of the provisions of the Act and rules made thereunder.
- vi) The bank accounts were examined and were found to be used in economic activity of providing and rendering taxable services of advertisement.
- vii) The appellant during the proceedings below was provided full opportunity of hearing and to prove its contention, but the appellant failed.
- viii) The appellant while providing advertisement services failed to charge SST on its invoices. Moreover the amount paid to the appellant by the service recipients were inclusive of tax and the appellant was liable to deposit SST with SRB under section 16(1) of the Act.



11. In rebuttal the learned advocate for the appellant reiterated the same contention recorded above with the addition that both the OIO and OIA were bad in law and suffered from illegalities and infirmities and could not be sustained.

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

13. The appellant got voluntarily registration under Tariff Heading 9802.7000 (advertisement on Billboards) on 30.05.2012 and at no point of time applied for change of service category. At this stage the appellant was estopped from changing its instance. Article 114 of the Qanun-e-Shahadat Order, 1984 deals with such situation and provides that if a person by his act or omission permitted another person to believe a thing to be true, neither he nor his representative shall be allowed to deny the truth of that thing. It was the appellant who got voluntarily registration under a specific Tariff Heading, filed SST returns and paid SST for some time and then stopped filing SST returns and payment of SST. However in response to SCN the appellant raised irrelevant pleas without mentioning anything about the nature of services provided by it. On a question from the Tribunal the learned Advocate submitted that the appellant partly provided services under Tariff Heading 9802.7000 and declared such SST in monthly tax returns.

14. The advocate for appellant contended that the core business of the appellant was to acquire billboards sites from KMC, DMC and Cantonment Board and to sub-let/re-let the same to advertisers. The learned Advocate was asked to show from the reply of SCN, grounds of appeal before Commissioner (Appeals) and the grounds of appeal filed before us whether this ground was specifically taken. The Advocate failed to show any specific plea or specific ground in this regard. He only submitted that this was a legal ground and could be raised at this stage. The appellant has also failed to produce any documents relating to acquiring of billboards sites and sub-letting/re-letting it to the advertisers. Apparently this ground was taken as an afterthought to avoid payment of SST.

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15. The OIO was passed after careful examination of the bank statements of the appellant. Moreover the bank accounts which did not pertain to the appellant were excluded and the amount confronted in the SCN was reduced while passing OIO. The burden was upon the appellant to prove its contention that she had not provided the services of advertising under which it had got voluntarily registration. Moreover the appellant after acquiring registration had neither applied for change of service category nor it had informed the SRB regarding its economic activities. The reply of the SCN was a basic document and it was incumbent upon the appellant to disclose the economic activities carried out by her. The reply was silent in this regard and no plea was raised that the appellant was in the business of acquiring billboards sites and sub-letting/re-letting the same on rent.

16. The ground that the appellant was in the business of acquiring billboards sites and sub-letting/re-letting the same on rent was not a legal ground. Since for legal ground no factual enquiry was required whereas the plea raised by the appellant required documentary evidence and factual investigation and inquiry. Moreover the appellant failed to produce any document in support of her contention.

17. It is pertinent to mention that as per clause (g) of Article 129 of the Qanoon-e-Shahadat Order, 1984 *"The court may presume the existence of any fact, which it thinks was likely to have happened, regarding being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case"*. Clause (g) of the above quoted Article provided that evidence which could be and was not produced would, if produced, be un-favorable to the person who withholds it. This presumption arises from willful withholding of evidence, thus where the party deliberately failed or refuse to produce document in her possession the only reasonable presumption to be drawn is that if the document were produced the same would be adverse to her.

18. In the instant case numerous opportunities were provided to the appellant by the AO to prove her contention that the credit entries were not related to advertising services. However the appellant by not producing the documents had failed to avail the same and thus she could not blame



the AO. The OIO was passed on the basis of the bank statements after providing reasonable opportunity to the appellant to explain the same. However on failure by the appellant to produce relevant details the AO has rightly passed the OIO, and we do not find any infirmity in such order.

19. The responsibility to withhold the entire SST on advertisement services was on recipients of advertising service, but the appellant had not charged the SST in its invoices and issued invoices which were inclusive of SST. However the service recipient while making payment to the appellant had passed on the entire SST to the appellant which was liable to be deposited by her with SRB under section 16 of the Act.

20. In view of the above discussions we do not find any merit in the appeal which is accordingly dismissed. The copy of the order may be provided to the learned representatives of the parties.


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER

Certified to be True Copy

Karachi:

Dated: 31.01.2022


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-22), SRB, for compliance

Copy for information to:-

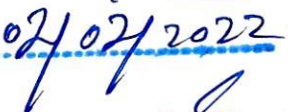
- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office Copy.
- ✓ 5) Guard File.

Order issued on


09/02/2022

Registrar

Order Dispatched on


02/02/2022

Registrar