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BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-15/2021

Assistant Commissioner SRB, (Unit-04),
09th Floor, Shaheen Complex,
M.R. Kiyani Road KarachiAppellant

Versus

M/s Cross Check Communication (Pvt.) Ltd,
114-116C, Jami Commercial Street # 13,
Phase-VII, Defense Housing Authority,
Karachi,Respondent

Date of filing of Appeal 26.02.2021
Date of hearing 23.09.2021
Date of Order 31.12.2021

Mr. Mukhtiar A. Memon, AC-Unit-4 & Mr. Nasir Bachani, DR- SRB for appellant.
Mr. Magsood Hassan, Manager Tax for the respondent.

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the Assistant Commissioner (Unit-04), SRB Karachi challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.111/2020 dated 08.12.2020 passed by the Commissioner (Appeals) in Appeal NO. 60/2017 filed by the respondent against the Order-in-Original (hereinafter referred to as the OIO) No. 07/2017 dated 27.04.2017 passed by Mr. Abdul Rauf Deputy Commissioner, SRB, Karachi.

02. The brief facts of the case as stated in the OIO were that the respondent was registered with Sindh Revenue Board (SRB) in services category of "Business Support Services" under Tariff Heading 9805.9200 of the Second Schedule to the

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Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) and was subjected to Sindh Sales Tax (SST) @ 13% (previously 14% & 15%)

03. It was alleged in the OIO that being a service provider of taxable services the respondent was required to deposit the SST rendered or provided by it in Sindh. It was further alleged that the scrutiny of tax profile/returns filed with SRB by the respondent revealed that it had failed to file the tax returns with SRB for the period July-2013 to June-2015 despite the fact that it was engaged in providing or rendering taxable services. It was further alleged that the analysis of Annual Audited Accounts for the year 2014 and 2015 revealed that the total revenue earned by the appellant from business was Rs.40,638,837/- for the year 2014 and Rs.83,973,689/- for the year 2015 totaling Rs.124,612,526/- involving SST of Rs.19,098,266/-. However the respondent had failed to deposit the same nor filed the SST returns with SRB.

04. It was further alleged in the OIO that the scrutiny of Annual Audited Accounts for the year 2014 & 2015 of the respondent revealed that it had received the services of advertisement and had made payment on this account for Rs.79,203,841/- (Rs.58,301,507+Rs.20,902,344/-) involving SST of Rs.12,089,599/-. Moreover as per clause (f) of sub-rule (2) of Rule 1 and sub rule (4) of Rule 3 of Sindh Sales Tax Special Procedure (Withholding) Rules, 2011 and 2014 (hereinafter referred to as the Withholding Rules) the respondent had violated the aforementioned Rules by not depositing said amount of SST of Rs.12,089,599/-.

05. The respondent was served with a Show-Cause Notice (SCN) dated 18.01.2017 calling upon it to explain as to why the tax liabilities of Rs.31,187,865/= should not be assessed and recovered under section 23 and 47(1A) of the Act along with default surcharge under section 44 of the Act. The respondent was also required to explain as to why penalties as per Serial No. 2,3,5, 6(d),11,12 & 13 of the Table of section 43 of the Act should not be imposed upon it for contravention of the various provisions of the Act and Rules made there under. In compliance to SCN the respondent filed written reply dated 19.09.2017 stating therein that the appellant had provided advertisement

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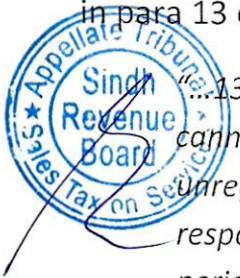
services though press and electronic media. The value of service of print media from July, 2013 to June, 2015 was declared at Rs.30,264,489/-.

06. The Assessing Officer (AO) observed in the OIO that from the above reply of the respondent dated 19.09.2017 it was clear that it had provided the taxable services of advertisement in newspaper Tariff Heading 9802.4000 and advertisement on TV Tariff Heading 9802.1000. Despite, these facts and legal position the respondent had failed to pay the SST of Rs.18,778,024/- in both years (2013-14 & 2014-15) which was in violation of the provisions of the Act.

07. The OIO was passed for the recovery of SST of Rs.30,867,024/- under section 47(1A) read with Section 23 of the Act alongwith default surcharge (to be calculated at the time of payment) under section 44 of the Act. The AO imposed penalty of Rs.620,898/- under Serial No. 3 of the Table under section 43 of the Act, and penalty of Rs.5,405,303/- under Serial No.2 of the Table under section 43 of the Act for non-filing of monthly tax returns for the period from July, 2013 to June, 2015. The AO also ordered for recovery of SST of Rs.12,089,599/- on account of receipt of advertisement services during the year 2015 & 2014 alongwith default surcharge (to be calculated at the time of payment) under section 44 of the Act. The AO further imposed penalty of Rs.604,479/= under Serial No. 3 of the Table under section 43 of the Act.

08. The appellant challenged the said OIO by way of filing of appeal before the Commissioner (Appeals) under section 57 of the Act. The Commissioner (Appeals) in para 13 of the OIA held as under:-

13. It has been variously held by the Superior Courts of Law that a taxpayer cannot be forced to pay any tax for the tax-periods during which he was an unregistered person. It is not understandable as under what provision of law the respondent AC could assess and demand tax from the Appellant for the tax-periods falling before his date of SRB registration, (16-02-2016). The learned AC-SRB has relied upon the definition of "registered person" as per section 2(71) *ibid*, whereby a registered person is said to be "a person registered or liable to be registered". This approach of the AC is utterly misconstrued. His attention is drawn towards the fact that the honorable SRB Appellate Tribunal in a number of judgments has strongly deprecated the indiscriminate application of section 2(71)



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ibid. Tribunal has ruled that 'tax cannot be demanded from an unregistered person' because Sales Tax is paid by a person (service-provider) only after collecting the same from his 'service-recipient' via lawfully issued sales tax invoice (in terms of Rule-29 of the SSTS Rules-2011). Since an unregistered person is not allowed to issue a sales tax invoice, how could he be asked to collect and pay tax for the tax-periods during which he was unregistered? As such, ACSRБ was not justified in demanding tax from the Appellant for the tax-period falling prior to his date of registration in SRB. Tax-demand in the instant matter is thus, unsustainable".

Resultantly the appeal was filed by the Department before this Tribunal.

09. The learned representative of the respondent Mr. Irfan Sohu, AC-SRB submitted as under:-

i. The respondent was registered on 16.02.2016 under service category of Business Support Service, Tariff Heading. 9805.9200, and the Tax Profile of the respondent showed payment of SST from June, 2015. However the respondent had filed first SST return as Nil for tax periods June, 2013 on 02.07.2017, but since the Business Support Services became taxable from July, 2013 thus the SCN for the tax periods from July, 2013 to June, 2015 was issued on 18.01.2017.

ii. The respondent has provided taxable services from July-2013 to June-2015 valuing Rs.40,638,837/- and Rs.63,973,689/- respectively, totaling Rs.124,612,526/- involving SST of Rs.19,098,266/-. Moreover the respondent had also received taxable services from July-2013 to June-2015 valuing Rs.79,203,841/- involving SST of Rs.12,089,595/-. Thus the OIO was correctly passed at Rs.30,867,623/- plus default surcharge and penalties.

iii. The Commissioner (Appeals) erroneously passed OIA annulling the OIO on the ground that no tax could be demanded prior to the registration of the respondent ignoring the definition of registered person provided under sub section (71) of Section 2 of the Act. It was further contended that the respondent was providing taxable services during the tax periods under dispute and was thus covered under person liable to be registered.

iv. That the respondent had never taken the plea that he was not liable to pay SST prior to date of its registration with SRB. The reference was



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given to the reconciliation report submitted before Commissioner (Appeals) which was also signed by the representative of the respondent and the same acknowledged that the SST liability of respondent as withholding agent. This aspect was not considered and adjudicated upon by the Commissioner (Appeals).

v. The respondent being a FBR registered person was a withholding agent, and was thus liable to withhold entire amount of SST on procuring advertising services.

vi. The OIA was passed only in respect of services provided by the respondent and the service received on account of purchase of advertising services were ignored. Thus the respondent was liable to pay SST of Rs.12,089,599/- .

10. In reply the learned representative for respondent submitted as under:-

i. The respondent during the tax periods 2013 to 2015 was not registered with SRB. However despite this fact it had paid SST. Furthermore the SST was also recovered by attachment of the bank account.

ii. The respondent is an advertising agent and works as middlemen between the TV Channels and clients (whose advertisements were displayed on TV) and had received its Commission from such clients. Moreover the respondent has not received the services of advertisement and was thus not liable to withhold SST.

iii. The respondent had duly paid SST on the commission received from its clients.

iv. The OIA was passed on the available facts and was not suffering from any legal infirmity.

v. The amount paid by the respondent through various CPRs was not adjusted by the appellant.

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

12. The SST was levied on advertising services provided by the respondent as well as advertising services received by it. However the contention of the



respondent was that it was an advertising agent and worked on commission basis and it neither provided advertising services nor received the same.

13. The tax periods involved in the instant appeal were from July-2013 to June-2015, but the respondent got itself registered under Tariff Heading 9805.9200, Business Support Service on 16.02.2016. The Tax profile of the respondent showed that the respondent started depositing SST from June-2015.

14. The AO assessed SST of Rs.18,778,024/= on account of providing of advertising services valuing Rs.122,536,814/=. He also assessed SST of Rs.12,089,599/= on account of receiving advertising services valuing Rs.79,203,841/=.

15. The AC submitted Reconciliation Report dated 01.06.2021 which showed that the SST payable on account of providing advertising services on electronic media after deleting the SST on print media was Rs.1,246,416/=. However the SST payable on account of receiving services was Rs.12,089,599/=. The total of both works out to Rs.13,336,015/= against which the SST of 30,867,623/= was determined in the OIO.

16. The AC submitted another Report dated 10.06.2021 reducing the amount from Rs.13,336,015/= to Rs.12,336,015/=.

17. The AC also submitted a Reconciliation Report dated 10.09.2020 before Commissioner (Appeals) which was summarized in Para 11 of OIA as under:-

11. As per the above noted Reconciliation, total value assessed for the under-reference tax periods came to be Rs.124,612,526/= Amount of Rs.116,318,665/= has been reconciled on account of exempt services of "Advertisement of newspapers". The remaining amount related to taxable services of Advertisement in Electronic Media, which was worked out to be Rs.8,293,861/= that involved SST worth Rs.1,246,416/=".

18. After hearing the parties and perusing available record, the following questions require consideration:-



- i. Whether the respondent was liable to deposit SST before its date of registration with SRB?
- ii. Whether the respondent being the recipient of advertising services required registration for withholding the SST?
- iii. What amount was withheld by the respondent and deposited with SRB as Withholding Agent on receipt of advertisement services, and what was balance amount payable by it?
- iv. Under what Tariff Heading of the Second Schedule to the Act the services provided by respondent fell?

19. The first point is "Whether the respondent was liable to deposit SST before its date of registration? The discussions are as under:-

i. The Commissioner (Appeals) in his various orders has held that no SST was payable by a taxpayer before the date of its registration. Such orders have been confirmed by us and till date the same have not been set aside by the Honorable High Court in referential jurisdiction. Few of such orders are mentioned as under:-

- a) Appeal No.73/2018, OIA No.97/2020 M/s Sinopec International vs. Assistant Commissioner (Unit-03), SRB dated 03.11.2020.
- b) Appeal No.308/19, OIA No.109/2020, dated 02.12.2020, and Appeal No.456/2018, OIA No.110/2020, dated 02.12.2020, M/s Fiber Link vs. Assistant Commissioner (Unit-01), SRB.
- c) Appeal No.303/2019, OIA No.95/2019, dated 28.10.2020, M/s Tracking Work vs. Assistant Commissioner (Unit-01), SRB.
- d) Appeal No. 389/2018, OIA No. 07/2021 dated 15.01.2021, WEB BNA versus AC, (Unit-11), SRB.

ii. The department levied SST for the tax periods from July-2013 to June-2015. Whereas the appellant got voluntarily registered on 16.02.2016 under Tariff Heading 9805.9200 (Business Support Service). The tax periods from July-2013 June-2015 during which SST was levied were thus prior to the date of registration of the appellant with SRB.

iii. The Contention of the AC was that the person liable to be registered was deemed to be a registered person and fell within the definition of



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registered person provided under sub-section (71) of section 2 of the Act and was liable to pay SST even before its formal registration with SRB.

iv. The above contention of the AC was examined by us in Para 19 of Appeal No. AT-18/2021, M/s WEB DNA versus AC (Unit-11) SRB vide our decision dated 16.11.2021. The detailed discussion has been undertaken on this issue and the relevant provision of law and the reported judgment in M/s S.K. Steel Casting, Gujranwala, 2019 PTD 1493 has concluded as under:-

“iv. The relevant provisions dealing with the assessment and registration are sub-section (1) of section 23, and sub-section (1) of section 24 of the Act. Moreover sub-section (71) of Section 2 of the Act provides that registered person means a person who is registered or is liable to be registered under this Act. Sub-section (1) of section 23 of the Act deal with the assessment of tax and contemplates that in case the registered person has not paid tax due on taxable services provided by him or has made short payment, the officer of SRB shall make an assessment order. Sub-section (1) of section 24 of the Act provided that registration will be required for all persons who are residents; and provide or render any of the services listed in the Second Schedule from their registered office or place of business in Sindh. If the above contention of the AC that the person liable to be registered was deemed to be registered person is accepted sub-section (1) of section 24 of the Act relating to registration and sub-section (1) of section 23 of the Act relating to assessment of registered person would become redundant which is legally not permissible. It is a cardinal principle of statutory interpretation that redundancy or superfluity must not be attributed to the Legislature, and that no part or word in a statute could be treated as superfluous.



20. In view of the above discussions and following our earlier decision in the Appeal of WEB DNA and other decisions supra we hold that the respondent was not liable to pay/deposit SST before the date of its registration with SRB and the OIA is maintained in this regard.

21. The second point is "Whether the respondent being the recipient of advertising services required registration for withholding the SST?" The discussions on this point are as under:-

i) That in view of clause (f) of rule-rule (2) of rule 1 of the Sindh Sales Tax Special procedure (withholding) Rules 2011 (hereinafter referred to as the Rules, 2011) all the resident persons of Sindh who are recipients of taxable services of advertisement are withholding agent and are required to withhold full amount of SST and deposit the same with SRB, in terms of sub rule (2) of rule 3 of the Withholding Rules, 2011.

ii) That in view of clause (f) of rule-rule (2) of rule 1 of the Sindh Sales Tax Special procedure (withholding) Rules 2014 (hereinafter referred to as the Rules, 2014) all the resident persons of Sindh who are recipients of taxable services of advertisement are withholding agent and in terms of sub-rule (3) of rule 3 of the Withholding Rules, 2014 require to withhold full amount of SST and deposit the same with SRB.

iii) Sub-section (3) of section 24 of the Act deals with the service recipients and reads as under:-

"(3) A person who receives a service, which is a taxable service by virtue of sub-section (2) of section 3, and is not a registered person shall be deemed to be a registered person for the purposes of the tax period in which such person:-

(i) receives the service;

(ii) an invoice for the value of the service is sent to the person; or

(iii) consideration for the service is paid by the person;

whichever is earlier and all the provisions of this Act and rules made there under shall be applicable to such person for that particular tax period and any matters relating to, arising out of, or concerning that tax period as if that person had provided the service.

It is clear from the above provision of law that a person who receives a service by virtue of sub=section (2) of section 3 of the Act and is not a registered person do not require registration. However such person by implication of law shall be deemed to be registered person for the purpose of the tax period in which such person receives the service; an invoice for

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the value of the service is sent to the person; or consideration for the service is paid by the person.

iv) The requirement in view of sub-rule (2) of rule 3 of the Withholding Rules, 2014 is that a withholding agent who is not already registered with SRB as service provider shall electronically apply for "Sign Up as Withholding Agent" with SRB on form SSTW-01. Thereafter SRB shall issue him a user ID, Password, and PIN Code for Sindh Sales tax withholding and payment purpose.

v) In the light of above discussion, it is held that for acting as withholding agent no formal registration for withholding the SST was required.

22. The third point is "What amount was withheld by the respondent and deposited with SRB as withholding agent on receipt of advertisement services and what was balance amount payable by it?" The discussion on this point is as under:-

i) The department had taken the figures from the Audited Financial Statements of the respondent. As per such figures the value of receipt of advertising services was Rs.20,902,334/= for the year 2013-14 and Rs.58,301,507/= for the year 2014-15. In its Reply dated 02.08.2021 the respondent submitted that "the amount shown in Table I and II are not taxable and thus were not justified, since it was only service provider and was not involved in any purchase or sale of any items/goods. This stand is not supported by the Financial Statement for the years ended 2014 and 2015.

ii) The AO in Para 11 of the OIO concluded that the respondent had received the services of advertisement and similarly they had made the payment of Rs.79,203,841/= involving of SST of Rs.12,089,599/= .The AO in the same Para further concluded that the respondent could not furnish any reply to this allegation.

iii) The Registration Profile of the respondent showed that it had got voluntarily registration on 16.02.2016 under Tariff Heading 9805.9200 (Business Support Service). The Tax Profile of the respondent showed that



the respondent started filing SST Returns from June-2013 and that the respondent while filing SST Returns from June-2013 claimed input tax adjustment against output tax without depositing the SST except once in the SST Return of December-2016 the respondent deposited Rs.929,886/= on account of withholding of SST. The Tax profile further showed that the respondent deposited SST of Rs.13,375,858/= starting from June-2015 to November-2020.

iv) The respondent against the receipt of advertisement services paid Rs.79,203,841/= and against the advertisement service received Rs.124,612,526/=. However in absence of any valid explanation from the respondent relating to the figure available in the Financial Statement the contention of the department that the respondent had received advertisement service and was required to withhold and deposit the entire SST with SRB could not be easily ruled out.

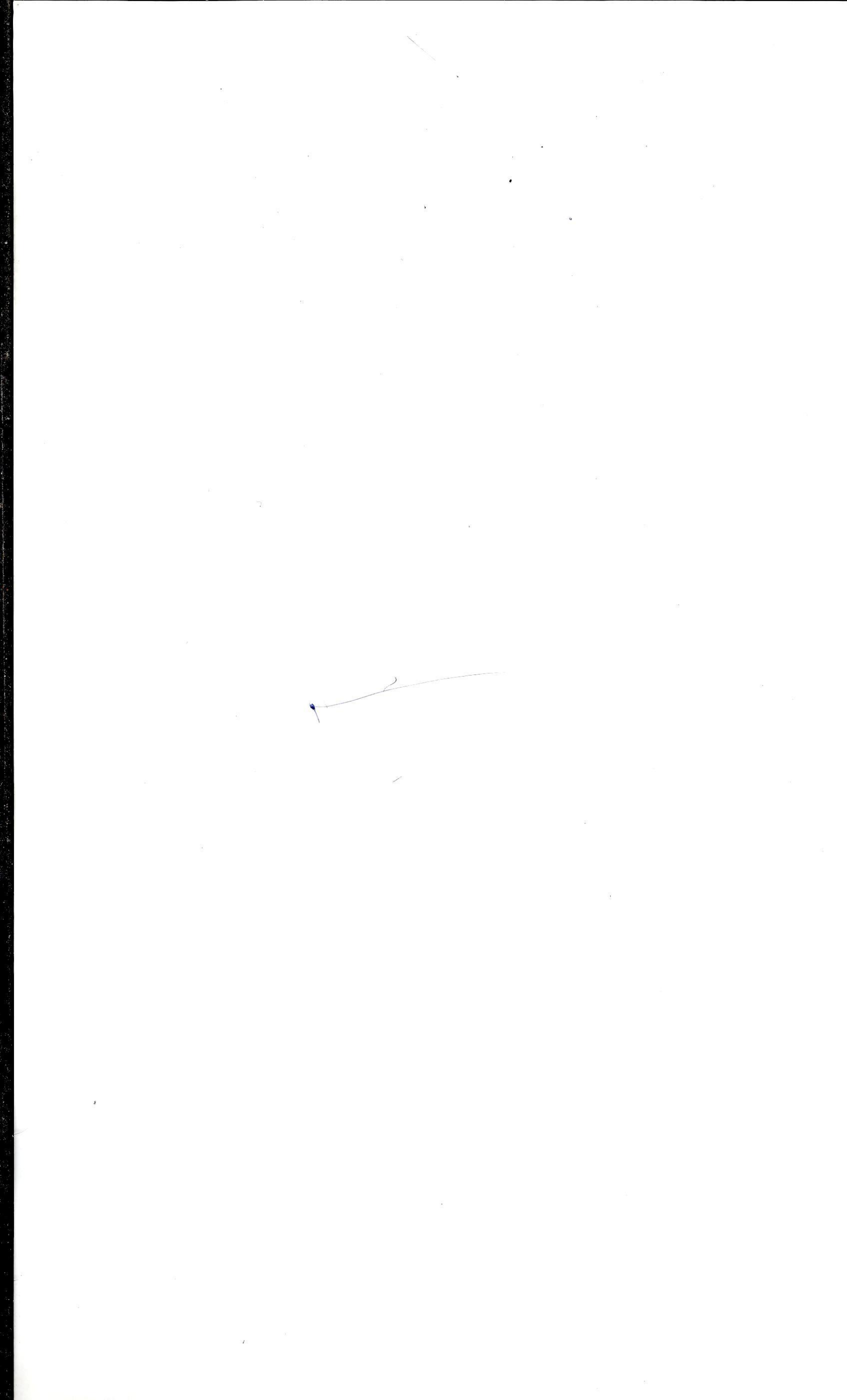
v) It is difficult for us to finally calculate the amount withheld by the respondent, the amount deposited with SRB and the balance amount payable by the respondent to SRB on account of withholding due to want of details and supporting documents.

vi) In view of the above discussion we remand the case to the AO to calculate the above amount afresh after calling for details and materials from the respondent and after providing proper right of hearing to it.

23. The fourth point is under "What Tariff Heading of the Second Schedule to the Act the services provided by respondent fell?" The discussions on this point are as under:-

i) The contention of the respondent was that it was an advertising agent. The appellant got voluntarily registration on 16.02.2016 under Tariff Heading 9805.9200 (Business Support Service) and never applied for correction of the Registration Profile. It is however evident from the perusal of the Tax Profile of the respondent that while rendering advertisement service the respondent also acted as an advertising agent. The advertisement service fall under Tariff Heading 9805.700 and is different from advertising on T.V. (T.H 9802.1000) and advertisement in newspapers and periodicals (T.H 9892.4000). The service of advertisement in





newspapers and periodicals (T.H.9892.4000) was exempted during the tax periods involved in this appeal.

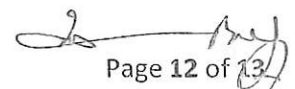
ii) The determining the SST was based on the figures available in the Financial Statements for the year ended June and June-2015 and the figures provided by the respondent. There appears no independent exercise on the part of the AO to link such figures to providing or receiving of advertisement service.

iii) It is evident from the Tax Profile of the respondent that it had received as well as rendered advertising services. However as per own submission it is clear that the respondent acted as advertising agent (T.H. 9805.7000) also and was thus required to pay SST on the service of advertising agent.

iv) It is difficult to decide the actual nature of service provided or rendered by the respondent on the basis of available record. Therefore the matter is remanded to the AO for calling details and materials from the respondent and after proper opportunity he should determine the actual nature of services provided or rendered by the respondent.

24. In the light of above facts it is held that respondent was not liable to pay/deposit the SST on providing or rendering services before the date of its registration. However, the respondent was liable to deposit the SST in its capacity as withholding agent on receipt of taxable services even prior to its registration.

25. It is further evident that the AO has incorrectly calculated penalty in fraction on the basis of days of default. In our decision dated 21.09.2020 in Appeal No. AT-12/20020, relating to case of M/s M. Sharif Rajput Enterprises, Hyderabad Versus Assistant Commissioner, SRB, Hyderabad relying upon the earlier decisions of the Tribunal in Appeal No.AT-92/2016 M/s Slingshot (Pvt.) Limited versus Assistant Commissioner, (Unit-21), SRB, Karachi decided on 05.01.2017, b) Appeal No. AT-47/2018, M/s Fumican Services versus Assistant Commissioner, SRB, decided on 16.10.2018 c) Appeal No. AT-175/2018 AC-SRB versus Powertech Switchgear Services, decided on 22.02.2019, we have very categorically held as under:-



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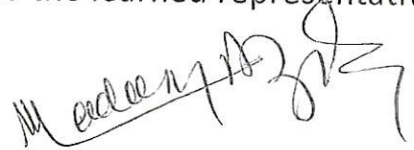
"16. It is provided at Sr. No.2 of Table of section 43 of the Act that where any person fails to furnish a return within the due date such person shall be liable to a penalty of Rs.10,000/= per month or a fraction (emphasis supplied) thereof; provided that if a return is filed within ten days of the due date, a penalty of 300 rupees for each day of default shall be paid".

17. In the above provision of the Act per month means per tax return as the tax period defined in sub-section (95) of section 2 of the Act provides that "tax period means a period of one month or such other period as the Board may, by notification in the Official Gazette, specify." Furthermore the Assessing Officer has incorrectly calculated penalty in fraction. In the provision at S. No.2 of Table of section 43 of the Act the word "fraction" denotes that in case of defaults of more than ten days the penalty for full month was to be imposed. Therefore for non-filing of monthly return penalty can only be imposed at Rs.10,000/= per month".

26. The appeal is partly allowed. The case is remanded to the AO to first determine the actual nature of service provided or rendered by the respondent. He should then determine and calculate the amount of withholding of SST if payable by the respondent on the receipt of advertising services. The AO should pass fresh OIO within sixty days from the receipt of the order.

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


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:

Dated: 31.12.2021

Copy Supplied for compliance:

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

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office Copy.
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REGISTERAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on 03/01/2022

Order Dispatched on 03/01/2022