

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**SPL.STRA NO.1133/2015**

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|------|-------------------------------|
| Date | Order with signature of Judge |
|------|-------------------------------|

1. For orders on CMA No.3030/2015
2. For order on office objection by reply of advocate "A"
3. For order on CMA No.3031/15
4. For Kartcha Peshi
5. For order on CMA No.3032

**11.9.2015**

Mr. Muhammad Anas Makhdoom and Ahmed Farhaj Advocates for the applicant.

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1. Granted
  2. To be complied within five days.
  3. Granted subject to all just exceptions.
- 4-5 Through instant Reference application, the applicant has proposed numerous questions which according to the applicant are Question(s) of law arising out of the order dated 6.7.2015 passed in Appeal No.AT/122 of 2015 by the Appellate Tribunal, Sindh Revenue Board, Karachi. Counsel for the applicant however submits that he will only press the following question(s).

- (g) Whether the Tribunal has failed to appreciate that the Applicant is not liable to the charge of sales tax on services under the Constitution being a company wholly owned by the Federal Government.
- (i) Whether the Tribunal erred in not noting that at the relevant time services provided by advertising agents were not chargeable to tax under the 2011 Act and hence there was not tax due?
- (m) Whether the Tribunal erred in concluding that the Show Cause Notice was validly issued under both Section 23 and Section 47 of the 2011 Act?
- (n) Whether the Tribunal erred in construing Section 23 of the 2011 Act as being applicable to the facts and circumstances of the case in particular not taking account that the 'information' forming the basis of the Show Cause Notice was not 'acquired during the audit, inquiry, inspection or otherwise' in terms of Section 23 of the 2011 Act?
- (p) Whether the Tribunal has treated withholding liability and levy of tax under the Act as one and the same?
- (q) Whether the Tribunal has correctly interpreted Section 17 of the 2011 Act in particular in treating Section 17 as a charging provision of the 2011 Act and applying Section 17 of the 2011 Act to withholding liability?

- (s) Whether when admittedly the amount claimed under an invoice is not paid, no amount is actually withhold/deducted and hence no liability to deposit under withholding rules is created?

Counsel for the applicant submits that the applicant Company is fully a owned Organization of the Federal Government, hence, in view of the Judgment of this Court in the case of *Civil Aviation Authority of Pakistan through Airport Manager versus Sindh Revenue Board through Chairman and two others 2013 PTD 2048* is not liable to pay the provincial Sales Tax under Article 165 and 165-A of the Constitution of Islamic Republic of Pakistan, 1973. Counsel further submits that the liability which has been created against the applicant is based on Withholding of Tax Rules dated 24.8.2011, purportedly issued Under Section 13 of the Sindh Sales Tax on Services Act 2011, whereas the provision for withholding of Sales Tax under Section 13 of the Act was incorporated through Sindh Finance Act 2013, whereas the period under the dispute is of 2011-2012. Counsel further submits that till 2013 advertising services were placed in Schedule-1 of Sindh Sales Tax Services Act 2011 and were not taxable, whereas, the Amendment, whereby, they have now been brought in Schedule-II, has taken effect through Finance Act, 2013, therefore per Counsel such services were otherwise not taxable at the relevant time. Counsel further submits that the impugned order is based on misreading of facts and law and has failed to address the legal issues raised on behalf of the applicant. Counsel further submits that pursuant to the impugned order, recovery notice dated 4.9.2015 has been issued to the applicant and it is apprehended that after expiry of the period given in the Notice i.e. 11.9.2015, Bank account of the applicant would be attached, which will seriously prejudice the applicant.

Let notice be issued to the respondents for 22.9.2015 till then the respondent department shall not take any coercive action against the applicant pursuant to recovery Notice dated 4.9.2015.

JUDGE

JUDGE