JUDGMENT SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Date	Judgment with signature of Judge

Present:-
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Mohammad Karim Khan Agha.

C.P. No.D-2798 of 2009

M/s. Independent Media Corporation
(Pvt.) Ltd. ..... Petitioner

VERSUS

The Province of Sindh
& others ..... Respondents

C.P. No.D-614 of 2010

M/s. Independent Newspaper Corporation
(Pvt.) Ltd. ..... Petitioner

VERSUS

The Province of Sindh
& others ..... Respondents

C.P. No.D-783 of 2010

M/s. Independent Music Group
(SMC-Pvt) Ltd. ..... Petitioner

VERSUS

The Province of Sindh
& Others ..... Respondents

Spl. STRA No.195 of 2009

M/s. Independent Media Corporation
(Pvt.) Ltd. ..... Applicant

VERSUS

Commissioner Inland Revenue
& others ..... Respondents

Spl. STRA No.196 of 2009

M/s. Independent Media Corporation (Pvt.) Ltd. ..... Applicant

VERSUS

Commissioner Inland Revenue & others ..... Respondents

Dates of hearing : **19.04.2018, 23.04.2018, 24.04.2018, 26.04.2018, 30.04.2018 and 08.05.2018.**

Date of judgment : **30.05.2018.**

Dr. Farogh Naseem, Advocate for the petitioner.
Mr. Mr. Ameer Bux Matelo learned counsel for the FBR.
Mr. Salman Talibuddin, Addl. Attorney General.
Syed Muhasan Imam Learned Counsel for respondent No.3/Additional Commissioner Inland Revenue in Spl. STRA No.195/2009 and Spl. STRA No.196/2009.
Mr. Malik Altaf Javed, Advocate for Intervener (Sindh Revenue Board).
Mr. Malik Naeem Iqbal Additional Advocate General and Mr. Jan Muhammad Khoro, Assistant Advocate General Sindh.
Ms. Sarwat Jawahri, State Counsel.

JUDGMENT

MUHAMMAD IQBAL KALHORO J:- By this single judgment, all the captioned matters involving same facts and laws filed by M/s Independent Media Corporation, a private limited company, incorporated under the Companies Ordinance, 1984 ('the petitioner') are disposed of.

2. The case of the petitioner is that it is a production house producing and developing television programmes and is owner of some television channels. It is a part of Jang Group of Companies and 'GEO' is its trademark. It is not in possession of any broadcasting equipment. In order to broadcast advertisements of its customers on its Geo and Geo News TV channels, it has purchased airtime from M/s International Media Corporation FZ LLC, a company which is based in and incorporated in Dubai, and which undertakes the activity of broadcasting / telecasting of advertisements through its own equipment. Item 2 to the Schedule of the Sindh Sales Tax Ordinance, 2000 ('2000 Ordinance') prescribes levy of tax on advertisements on TV and Radio but it is vague and does not give any details in this connection. That only under rule 67 of the Sales Tax Special Procedure Rules, 2006 ('2006 Rules'), which is a delegated legislation and therefore through which the tax could not be imposed, the term taxable service in relations to advertisement has been defined as the ***broadcasting*** or ***telecasting*** of any advertisement on radio or television.

But since the petitioner is not a broadcaster/telecaster, it is not liable to pay sales tax under 2000 Ordinance and the rules thereunder.

3. The dispute between the petitioner and the respondent department over the issue of payment of sales tax related to tax periods from July 2004 to June 2006 on services of advertisements being telecast on the petitioner's television channels Geo and Geo News started when on information received by the Collector (Audit) that the petitioner was involved in short filing of payment of sales tax in its monthly sales tax returns the relevant record was examined. It was found that the petitioner during the aforesaid period had made short payment of sales tax amounting to Rs.193,594,513/-. Accordingly, the petitioner was issued a show-cause notice dated 18.11.2006 that why short levy of sales tax of above said amount along with default surcharge and penalty should not be recovered from it. The petitioner in its reply claimed that he had already made part payment of Rs.513,575,231/- (which is undisputed) and his request for making remaining payment through installments has already been granted. However, the reply was found unsatisfactory and led to passing of Order-in-Original dated 04.01.2007 by the Additional Collector (Adjudication) directing recovery of short paid amount from the petitioner along with default surcharge and a penalty equal to 100% of the tax. The petitioner preferred the first appeal against that order which was disposed of vide order dated 15.5.2007, whereby it was held that the petitioner's activity of purchasing air time from M/s FZLLC, a Dubai-based company, and selling the same further for commercial purposes does not come within the ambit of 2000 Ordinance and 2006 Rules; and that levy is on showing advertisements on television, which is being done from Dubai by the said company and not by the petitioner from Sindh. Yet, finding the petitioner had issued proper sales tax invoices and charged an amount of Rs.193.594 million from its customers from July 2004 to June 2006 and which it had failed to deposit, the appellate forum directed the petitioner to pay such amount of sales tax along with penalty and default surcharge. This order prompted both the petitioner and the department [The Collector, Sales Tax (Audit), Karachi] to file appeals. The petitioner challenging recovery of tax, penalty, additional tax/default surcharge and the department mainly questioning the findings holding that the activity of purchasing airtime by the petitioner from the telecasting company and selling the same further for commercial purpose is not covered under the provisions of relevant sales tax laws, and as such the petitioner is not liable to pay sales tax. The learned Appellate Tribunal dismissed the appeal of the petitioner and allowed the appeal preferred by the

department vide order dated 24.10.2009 which has been challenged by the petitioner in the above stated special sales tax references on the following proposed questions of law.

> ***"Whether the Learned Customs, Excise and Sales Tax Appellate Tribunal was correct in observing that the applicant was liable pay penalty, additional tax/additional surcharge and had committed any tax fraud?"***
>
> ***"Whether the Learned Customs, Excise and Sales Tax Appellate Tribunal was correct in coming to the conclusion that for the tax period in question the applicant was liable to pay sales tax under the Sindh Sales Tax Ordinance, 2000?"***

4. Record further reflects that during pendency of the appeals before the Appellate Tribunal, the petitioner against an alleged recovery drive and attachment of its bank accounts filed a CP No.D-1365/2007 before this court which was disposed of vide order dated 29.06.2007 with directions to the respondents to compute the sales tax liability against the petitioner in the light of order of the Collector (Appeals) dated 15.5.2007. But, it is alleged, unmerited demands were made by the Assistant Collector which the petitioner assailed in three different appeals in the year 2008 before the Collector of Sales Tax, Appeals. And further to stop alleged coercive action for recovery, the petitioner again filed a CP No.D-1553/2007 before this court that was disposed of with directions to the respondents to not take any coercive action against the petitioner subject to its depositing Rs. 50 million, and in addition, the learned Appellate Tribunal was directed to decide the pending appeal of the petitioner.

5. Finally besides filing the aforementioned two special sales tax references, the petitioner filed the instant petitions challenging mainly the provisions of 2000 Ordinance in particular item 2 of its schedule; rules 67, 68 and 69 of 2006 Rules; rules 36 and 37 of the Sales Tax Special Procedure Rules, 2007 (2007 Rules); SRO 315(1)2008 dated 27.03.2008; SRO 660(1)2007 dated 30.06.2007; and rule 2(e) of SRO 603(1)2009 dated 25.06.2009. On the grounds that the said rules defining the value and scope of sales tax on services under 2000 Ordinance in respect of the advertisements on TV and Radio have been illegally prescribed; that rule 67 (1) of 2000 Rules provides that in relation to advertisements the term 'taxable service' means ***broadcasting or telecasting*** of any advertisement on radio or television, but the petitioner at the relevant times did not have a broadcasting license for its Geo and Geo News channels. That in fact it had a license issued by the Pakistan Electronic Media Regulatory Authority Ordinance, 2000 (PEMRA Ordinance) but it

was only for landing rights which means distributing and marketing the authorized channel. In the backdrop of aforesaid assertions, the petitioner has sought following reliefs in all the three petitions.

a) *"declare that the Petitioner is not liable to pay any sales tax under the Sindh Sales Tax Ordinance, 2000 or the any rules, notifications, circulars or orders made or issued thereunder;*

b) *declare the Sindh Sales Tax Ordinance, 2000 in particular item No.2 to its schedule, so also rules 67, 68 and 69 of the Sale Tax Special Procedure Rules, 2006, Rules 36 and 37 of the Sales Tax Special Procedures Rules, 2007, SRO 315(I)/2008 dated 27.03.2008 SRO 660(I)/2007 dated 30.06.2007 (as applicable to the Petitioner) and Rule 2(e) of SRO 603(I)/2009 dated 25.06.2009 to be illegal, ultra vires, unconstitutional and of no legal effect;*

c) *declare the Constitution Seventeenth Amendment Act, 2003, in particular Article 270 AA of the Constitution to be ultra vires, illegal malafide, against the fundamental rights of the basic structure of the Constitution.*

d) *hold that section 3B of the Sales Tax Act, 1990 is not applicable to the Petitioner; alternatively the same is unconstitutional;*

e) *permanently and pending disposal of the main petition restrain the Respondents, their officers and agents from recovering any principle sales tax, penalty, additional surcharge and default surcharge in any manner whatsoever;*

f) *award costs and special costs;*

g) *award any other relief deemed fit."*

In addition, the petitioner in CP N0.D-614/2010 in prayer clause (e) has sought cancellation of a recovery notice dated 20.2.2010 on the grounds of it being unconstitutional, against principle of natural justice, without jurisdiction, etc.

6. The respondents have filed the counter-affidavit mainly disputing the contentions of the petitioner and supporting their case as has been reproduced above.

7. Dr. Farogh Nasim learned counsel for the petitioner in his arguments read out relevant provisions of 2000 Ordinance and the rules thereunder. He particularly referred to section 3(2) and item 2 of the schedule of 2000 Ordinance and rule 67 of 2006 Rules and rule 36 of 2007 Rules to explain his case. His first argument was that item 2 is vague and does not specify who is to be charged, and how the tax is to be charged, levied and collected. He further added that this entry (item 2) simply spells out advertisement on TV and Radio without the word broadcast and does not give any details catering for incidence of tax, mode and manner of charging such tax. Per him when such is the situation (the very levying of a tax is vague), the tax must fail and since this is the case here, the levying of tax on the petitioner must fail and it could not be called on to pay any tax, or penalty or default surcharge thereon. He next contended

that in order to cover vagueness in the levying of tax, 2006 Rules were prescribed and under rule 67 it was provided that in relation to advertisements the term taxable services would mean the ***broadcasting*** or ***telecasting*** of an advertisement on radio or television. Which indicates that only through delegated legislation, the sales tax on broadcasting / telecasting of the advertisements was imposed. According to him, only through ***the fiscal statute*** the tax on a particular activity can be imposed, and not indirectly through the subordinate rules. He further referred to Article 77 of the Constitution to support his contention that a tax can be levied and collected only under the authority of Act of the parliament and not otherwise.

8. He next contented that regardless of legality or otherwise of item 2 and rule 67 *ibid,* the petitioner is not liable to be charged with sales tax as it is not engaged in any activity of telecasting/broadcasting of the advertisements so as to be considered rendering any services leviable to tax within the meaning of 2000 Ordinance; that the petitioner only booked advertisements of its clients in Pakistan and then sent to a company at Dubai for broadcasting from which it had only purchased airtime for its two television channels for this purpose; that such an activity of the petitioner i.e. booking advertisements and sending to a company in Dubai for broadcast is not a taxable activity under the law. Per him under section 3 of 2000 Ordinance, the tax would be charged on taxable services rendered in the Province of Sindh, and the taxable services as per claim of the respondents are the advertisements but they were being telecast by a Dubai-based company, as such charging of sales tax from the petitioner in this connection is illegal and void *ab initio*.

9. Learned counsel further stated that in February 2007, the petitioner was allowed a facility of paying overdue amount of sales tax through installments, which it availed; hence the petitioner could not be burdened with the penalty and/or default surcharges. He then hastened to add that although the petitioner not being the provider of taxable services was not liable to pay tax, but under the pressure and just to save itself from any further default and to show bona fide on its part paid the installments; that although the petitioner in these circumstances is entitled to the refund of the said amount, but if the respondents charge no more tax, the petitioner would not ask for the refund. Learned counsel then urged that proceedings of charging tax from the petitioner are based on mala fide, ulterior motives, and the same are tantamount to causing it harassment. He then proceeded to read out the order-in-original and the order-in-

appeal and stated that the learned appellate forum did not find the petitioner doing any taxable activity or rendering any taxable services within the meaning of 2000 Ordinance. He referred to the relevant portion in the order of the appellate forum holding that the petitioner had purchased airtime for its two channels (Geo and Geo News) from M/s FZLLC which is an independent legal entity based in Dubai and this company is actually telecasting the advertisements sent to it by the petitioner. The purchasing of airtime from telecasting company and selling it further for commercial purpose is not the taxable activity covered under the provisions of 2000 Ordinance and 2006 Rules, and thus the petitioner is not liable to pay sales tax. He further submitted that after such order of the appellate forum, through an SRO dated 27.03.2008 an amendment based on mala fide was brought in rule 36 of 2007 Rules (which is identical to rule 67 of 2006 Rules) whereby the scope of taxable services relating to advertisement was expanded to include broadcasting of advertisements by TV or Radio stations based in Pakistan or the same booked in Pakistan for broadcasting on TV or Radio stations based abroad. He strongly urged that that such an amendment is an admission of the fact that before it there was no levy in law in respect of the advertisements being telecast from abroad on the domestic television channels. According to him, rule 67 of 2006 Rules and rule 36 of 2007 Rules do not seem to expand simply procedural dimension of the charge but tend to expand the charge itself and when it is the case, it will be a new charge which cannot be imposed through a delegated authority.

10. He further added that the petitioner had a license issued by PEMRA but it was only in respect of landing rights which would mean only marketing and distributing the authorized channel and it does not confer any right of broadcast on the petitioner. Learned counsel also reiterated that the petitioner in fact had already paid the entire principle amount; and then under the notification dated 17.04.2014 issued by Sindh Revenue Board ('SRB') stipulating exemption of the whole penalty amount and 95 percent of default surcharge on payment of entire principle amount plus 5 percent of the outstanding default surcharge, paid the entire principle amount and 5 percent of default surcharge and thus nothing in respect of either principal amount, penalty or default surcharge is outstanding against the petitioner. He contended that even before the said amnesty scheme of Sindh Revenue Board, the federal government under an SRO # 648 dated 25.06.2011 (available at page No. 511 of CP No. D-2798/2009) had offered exemption of whole default surcharge and penalty on payment of outstanding principal amount of sales tax or federal excise

duty by 30.06.2011, and the petitioner in terms of that amnesty scheme paid the entire principal amount on due date, as such neither there was any overdue principal amount of sales tax against the petitioner nor the petitioner could be burdened with penalty or default surcharge. In support of his contentions, learned counsel has relied upon the cases of ***New Allied Electronics Industries (Pvt.) Ltd. [2017 P T D 130], Deputy Collector, Central Excise and Sales Tax, Lahore Vs. Messrs ICI, Pakistan Limited, Lahore [P T D 2006 1132, 2006 PTD (Trib) 1189 [Income-tax Appellate Tribunal Pakistan], In the Reference No.2 of 2005 [P L D 2005 Supreme Court 873], Collector of Customs Appraisement, Collectorate, Customs House, Karachi Vs. Messres Gul Rehman, Proprietor Messrs G. Kin Enterprises, Ghazali Street, Nasir Road, Sialkot [2017 P T D 622] and Central Board of Revenue and 3 others vs. Seven-Up Bottling Company (Pvt.) Ltd. [1996 S C M R 700, Govindas Saran Ganga Saran vs. Commissioner of Sales Tax and Others {(1985) 155 ITR 144 (SC)}, 2007 PTD 1195, 1985 155 ITR 144 (SC of India), AIR 1985 SC 1041, 1981 Volume 128 ITR 294, PLD 1964 SC 113, 1993 SCMR 1635, PLD 1988 SC 370, PLD 1953 Lahore 433, PLD 2010 SC 189, 1993 SCMR 1712, 2003 PTD 2861, 2002 YLR 3498, 1994 CLC 994, PLD 1998 SC 64, 1994 SCMR 1321.***

11. On the other hand Mr. Ameer Bux Matelo learned counsel for the FBR has contended that incidence of imposing sales tax on advertisements is provided by the fiscal statue and not by the rules thereunder. He referred to section 3 of 2000 Ordinance and stated that the said provision of law is the charging section levying tax on rendering the taxable services and as per item 2 of the schedule the advertisements on television and radio are taxable services. There is no ambiguity in the charging section in regard to incidence of tax, nor is any conflict between the same and the schedule as far as levy of tax on provision of services of advertisements on television and radio is concerned. According to him, the charging section is in the 2000 Ordinance, whereas provisions relating to collection, assessment and filing of the tax returns are available in the Sales Tax Act, 1990 (the Act) which in terms of section 3 (3) of the 2000 Ordinance is applicable in the case of the petitioner. He further submitted that 2006 Rules and 2007 Rules are machinery provisions which are to be construed liberally because they are meant to realize the proper tax. According to him, the incidence of tax in the present matter is clear and by prescribing rule 67 of 2006 Rules and rule 36 of 2007 Rules only some clarification qua realization of the subject tax has been provided which is not illegal because it does not create any new charge; and that such

clarification has to be seen in the context of the scheme of the subject law that is but to realize the tax.

12. He next contended that sales tax is an indirect tax and the burden is on the end-consumer. In this matter, he urged, it is not disputed that the petitioner had collected the sales tax on behalf of the government which is even otherwise evident from the invoices issued by it to its customers, but the case is that the petitioner failed to deposit the same with the government as required by law. Per him due to failure of the petitioner to pay such amount of tax, the government has incurred two losses, on the one hand the persons who paid such tax to the petitioner claimed input tax adjustments on the basis of invoices issued to them, and on the other the petitioner who collected such amount of tax for the government did not transfer it accordingly. He further maintained that on the one hand the petitioner had collected the tax amount from the consumers as provided in the Act. But on the other when it is called upon as required by the same law to pass on the tax amount to the government; the petitioner raises a claim that it is out of the sphere of the said law, which is self-contradictory. That under the law the petitioner was required to pay the tax amount within 40 days of collecting the same, but it failed to do so and utilized the same in its business, as such the petitioner unjustly enriched itself on the revenue belonging to the government. According to him, section 3B of the Act specifically stipulates that even if the tax is collected under misapprehension of any provision of law and the incidence of tax has been passed on to the consumer, the collecting agent shall pay the amount of tax to the government, but the petitioner despite collecting amount of tax from the consumer failed to deposit the same. Therefore, the petitioner is liable to pay penalty under section 33 (13) and default surcharge under section 34 of the Act. In support of his contentions, he has relied upon the cases of ***1996 S C M R 700, P L D 2005 S C 873, 2017 P T D 130, 2007 PTD 622, 2007 PTD (Trb.) 1943 and PTCL 2007 CL 507.***

13. Mr. Salman Talibuddin learned Additional Attorney General contended that the petitioner besides holding a license of Landing Rights had also a license for Satellite television channels granting it a right of broadcasting. Therefore, the stance of the petitioner of not being engaged in broadcasting was incorrect. Further he read out several clauses of the Landing Rights license to establish that the petitioner had a full control over broadcasting of the programmes and advertisements on its television channels and the rights given to the petitioner under the Landing Right

license were similar to the ones granted to it under the Satellite TV license. He added that the petitioner was relaying advertisements on its television channels which are based in Pakistan; as such the petitioner is subjected to the provisions of the Act. According to him, the petitioner is the electronic media in terms of clause (hc) of section 2 of PEMRA Ordinance which includes broadcast media defined in clause (c) of said section and thus the petitioner is a broadcaster within the definition of clause (d) of said section and liable to sales tax under 2000 Ordinance. According to him, the petitioner is liable to pay not only the entire amount of sales tax outstanding against it but penalty and default surcharge as well. Because not only the petitioner kept charging 15 percent sales tax continuously from its clients as is reflected from its invoices but instead of transferring the same to the government as required by law further used it in the business thereby unjustly enriched itself.

14. Mr. Naeem Iqbal learned Additional Advocate General Sindh contended that the petitions are not maintainable, the petitioner has no grievance to file these petitions, the sales tax, the subject matter of these petitions, being indirect tax was charged and collected by the petitioner from its clients. The petitioner was merely a collecting agency and the tax on services of advertisements was actually paid by the customer, as such no proprietary or personal right of the petitioner was invaded and it sustained no direct or indirect injury. Therefore, the petitioner has no cause of action to file these petitions. He further stated that in the charging section of the fiscal statute all the basic ingredients of levy of tax are available; the taxable activity in respect of provision of services of advertisement is clear, the incidence of tax is ascertainable and there is in no vagueness in this regard. He next argued that the rules are machinery provisions of law meant to realize object of the main law, and as such the same are to be liberally construed. He relied upon a case law reported in ***PLD 2007 SC 386.***

15. Syed Muhasan Imam Learned counsel for respondent No.3/Additional Commissioner Inland Revenue in Spl. STRA No.195/2009 and Spl. STRA No.196/2009 supported the impugned order passed by learned Appellate Tribunal and further submitted that M/s FZLLC is the sister concern of the petitioner and was established in Dubai only to evade sales tax; that the petitioner is registered with the sales tax department as a service provider and was collecting tax from its clients but did not deposit the same with the government; that such conduct of the petitioner

amounted to tax fraud as defined by section 2 (37) of the Act and therefore it is not only liable to pay penalty but default surcharge as well.

16. Heard and perused the relevant material including the case law cited at the bar. The main controversy between the parties as argued by them before us appears to be mainly on the questions whether the sales tax is leviable under the fiscal statute (2000 Ordinance) on provision of services of ***broadcasting*** *or* ***telecasting*** of the advertisements on television or radio, or it has been made a taxable activity through the rules framed thereunder, and if it is so, whether in law the tax can be imposed on an activity not leviable to tax under the fiscal statute through the subordinate rules. And regardless of the above, whether the petitioner, who claims to have purchased airtime from M/s FZLLC, a Dubai-based company, for broadcasting of advertisements on its TV channels, would be liable to pay sales tax on such an activity. There is no cavil to the proposition that a tax cannot be levied automatically through a delegated legislation until and unless it is leviable under the charging provision of the fiscal statute. In the present case, we have seen that section 3 of the 2000 Ordinance that provides for scope of tax stipulates in clear terms that there shall be charged, levied and paid a tax known as sales tax at the rate of fifteen percent of the value of taxable services rendered or provided in Sindh. Section 3 (2) of the said law enunciates that such tax shall be charged and levied on the services specified in the schedule. Further under Section 3 (3), all the provisions of the Act, and rules made and notifications, orders and instructions issued thereunder have been made applicable, *mutatis mutandis,* to the collection and payment of tax under the said Ordinance. Item 2 of the schedule specifies advertisement on TV and Radio, which if read together with section 3 (2) of 2000 Ordinance would suggest that an advertisement on TV and Radio has been made the taxable services. Furthermore, it may be noted that clause (35) of Section 2 of the Act provides that any economic activity carried on by a person whether or not for profit which, among others, involves the supply of goods, ***the rendering or providing of services, or both to another person*** is a taxable activity. If this expression in the Act is read together with section 3 of 2000 Ordinance and item 2 of the schedule, it would likewise indicate that the advertisement on radio or television which is to provide services to other persons (advertisers) is a taxable activity. So it is obvious that insofar as the services of broadcasting of the advertisements on television or radio is concerned, it has specifically been prescribed as the taxable services in the fiscal statute and it is not the case that this particular activity has been made a taxable activity through

the subordinate rules as argued by learned counsel for the petitioner. On this point learned counsel for the petitioner further urged that item 2 prescribing advertisement as taxable services is vague and does not specify how the incidence of tax on advertisements would come about, who is to be taxed and what is the mode and manner whereby the tax would be charged. And when the very imposition of tax is unclear, the tax must fail and that the vagueness in tax cannot be addressed through the subordinate rules. Therefore, rule 67 of 2006 prescribed only for the purpose of addressing the ambiguity of the charging provision and specifically levying sales tax on services of broadcasting or telecasting of the advertisements is unconstitutional. In reply, it may be said that Section 3 of 2000 Ordinance r/w item 2 of the schedule has expressly levied tax on services of advertisements on television and radio and there is no ambiguity in this regard. All the components necessary for identifying the taxable event attracting levy are ascertainable from a bare perusal of aforesaid charging section, the nature of tax and incidence of tax are both clearly indicated, besides who is to be charged is easily determinable. The question relating to vagueness in tax would arise when {as is held in the case of ***Govind Saran Ganga Saran*** (supra)} there is uncertainty in the character of the imposition known by its nature which prescribes the taxable event attracting the levy; there is no clear indication of the person on whom the levy is imposed and who is obliged to pay the tax; the rate at which the tax is imposed is uncertain; and the measure or value to which the rate will be applied for computing the tax liability is not provided in clear terms. Contrary to any of such positions, the law (2000 Ordinance) has evidently prescribed such tax as sales tax; the taxable event as the rendering or providing of services in the Province of Sindh, which clearly indicates that such services provider would be levied such tax and he would be obliged to pay the same; the taxable services as defined in item 2 of the schedule which, among others, is the advertisement on television and radio; and that such tax shall be levied at the rate of fifteen per cent of the value of taxable services for computing the tax liability. So all the necessary components prescribing the taxable event for attracting levy are evidently ascertainable in this case and there is no uncertainty in this regard to doubt validity of the subject tax in the present context. In view of the matter, the argument of the petitioner that there is vagueness in the tax and therefore it must fail is not sustainable.

17. As to rule 67 of 2006 Rules, it may be said that the said rule has merely sought to explain that in item 2 in relation to ***advertisement*** the term taxable services would mean ***broadcasting or telecasting*** of any

advertisement on ***radio or television***. In our view, by this expression nothing new which is not already provided has been added in item 2. It does not seem either contradictory to what the charging section prescribes in this respect. The concept of ***the advertisement-on-television-or-radio*** without advertisement being actually ***broadcast or telecast*** on television or radio would seem absurd. We cannot accept the argument that the legislators had not known this elementary fact before making advertisements on television or radio as taxable services and only through *ibid* rule they imposed levy on advertisements by providing that in relation to advertisements the services would qualify as taxable services when the same are being broadcast or telecast on television or radio. Because such a construction would be against the well settled principle of interpretation that the words and expressions in a given law shall be assigned simple, plain and easily deductible meaning for the purpose of understanding their scope and object. Any construction influenced by the understanding that advertisement on TV and radio does not mean broadcasting of advertisement on TV and radio would not only be unnatural but would go against the plain meaning of charging section of the statute. We are clear in our mind that when item 2 says advertisement on television or radio is a taxable activity, it actually says broadcasting of advertisement on television or radio is a taxable event. The advertisement in the context of television or radio would form a taxable event attracting levy when it is broadcast on television or radio. Only when the advertisement is broadcast, it will qualify as services being rendered to another person. Needless o say that the tax on services would be attracted when the services are provided to a person indicating that incidence of tax has happened. An advertiser would be imposed tax only when he is provided with services of broadcasting of his advertisements on television or radio. No broadest on TV means no services and that would signify no tax. This simple equation must be known to the legislators when they made advertisement on TV or radio as taxable services through 2000 Ordinance fully realizing that the same would be interpreted as broadcasting of advertisement. Three categories of advertisements in item 2 that are excluded from such levy further strengthens this opinion, a reference to exception (iii) would be relevant which provides for that a public service message ***if telecast on television*** by World Wildlife Funds for nature or UNICEF would not be leviable to tax. The words ***'telecast on television'*** are significant and clearly signify what the legislators intended when they made the same activity as taxable services. So it is obvious that an advertisement on television or radio in item 2 for all the purposes would signify broadcasting of the advertisements on television or radio. There is

no vagueness in the charging section of law in this regard which rule 67 of 2006 Rules is seeking to address. For the foregoing, we hold that the argument of learned counsel that the levy is vague because the word broadcast is not mentioned in item 2 in relation to advertisements on television or radio is not sustainable.

18. We have also examined rule 36 of 2007 Rules, which previously was analogous to rule 67 of 2006 Rules and was amended vide SRO 315(1)2008 dated 27.03.2008. By this amendment in relation to advertisements on television and radio in the expression taxable services three (3) more expressions i.e. ***(a) broadcast or telecast by TV or Radio stations based in Pakistan; (b) booked in Pakistan for broadcasting or telecasting on TV or Radio stations based abroad, whether or not possessing landing rights in Pakistan; and (c) transmitted on closed circuit TV or cable TV network,*** have been provided. Learned counsel for the petitioner argued that this amendment clearly suggests that prior to it there was no levy on the booking of advertisements in Pakistan or the advertisements broadcast by Pakistani television channels. We are not persuaded by this argument because by means of these expressions no new tax on advertisements which is independent of charging section (Section 3 of 2000 Ordinance r/w item 2 of the Schedule) has been introduced. It is already held in the preceding paragraph that the advertisements on television and radio in item 2 would mean broadcasting of advertisements on television and radio. Therefore, as a natural corollary, any services which is integral part of and actually lead to transmission of advertisements on television and radio would be taxable services within the meaning of item 2. This position does not seem to have been materially altered by these expressions. In actual fact the legislator through rule 36 of 2007 Rules has simply sought to elucidate the mandate and object of the charging section of law in order to make realization of tax possible, which is not an alien concept or impermissible in law. The rules, etc. can be prescribed in an explanatory manner to achieve the objective of a given statute. In the case of ***New Allied Electronic Industries (Pvt.)*** (supra), a division bench of this court (of which one of us, Muhammad Iqbal Kalhoro, J. was a member) has held in paragraph No. 8 of the judgment that the Executive Authorities on the basis of delegated legislation cannot impose a tax on a particular activity which is not leviable to tax under the main fiscal statute and if such a tax is imposed, it would be illegal. This case law was relied upon by learned counsel for the petitioner in support of his arguments on this point. In our view this would still hold good and applicable to all such cases where a tax has been

imposed on a particular activity through a delegated legislation. However, it may be added that the above findings were given in the context of different facts and cater for a distinct situation where through a delegated authority by an SRO value added sales tax was imposed on import of goods which was inconsistent with the provisions of the Act, and, therefore, such tax was held to be illegal. However, simultaneously it was also observed that purpose of delegating powers to the Executive to frame rules, regulations and issue notifications, etc. was to facilitate implementation of the parent statute for achieving its object and mandate. Meaning thereby that for achieving the object of a given fiscal statute, the Executive Authorities are not only vested with the powers to frame rules, etc. but in the course of which are equally competent to remove all the impediments in implementation of the said law to realize its object. The condition, however, as was held would be that the said rules, etc. are not opposed to what the main law prescribes and shall not provide a new tax or make a particular activity as a taxable activity unless the same is leviable to tax under the main fiscal statute. Here in the present case as is obvious from the above discussion, there is nothing to show that the elucidations provided in rules 67 or 36 *ibid* in any way are opposed to what the main law prescribes qua advertisements on television and radio being taxable services; or they tend to introduce a new tax in respect of the advertisements which is otherwise not provided; or the same proceed to make the services of advertisements as a taxable activity which is otherwise not the case. Furthermore, in essence Rule 67 of 2006 Rules and rule 36 of 2007 Rules are machinery provisions and their object is to make realization of the tax possible. In this respect, while relying upon the case of ***Commissioner of Income Tax versus Messrs Eli Lilly Pakistan (Pvt.) Ltd. (2009 SCMR 1279)***, we may add here that the provisions imposing tax would be strictly interpreted in favour of the subject for resolving any substantial doubt in his favour. But the machinery provisions like the rules, regulations, etc. which provide for assessment, realization, etc. of a tax would be construed liberally. If the incidence of the tax is clear, the event attracting the levy is ascertainable and the person on whom the tax is imposed is indicated clearly, the machinery provisions that are enacted to make realization of the tax possible would be liberally construed, and not interpreted in a way to prevent collection of due tax and thereby defeating intention of the fiscal statute. This being the legal position, we are of the view that rule 67 of 2006 Rules and 36 of 2007 Rules are properly and validly prescribed pieces of legislation which are meant to achieve object of the main fiscal statutes and there is no

unconstitutionality in their scheme so as to be declared *ultra vires* to the Constitution.

19. Regarding contentions of the petitioner that it had no concern with actual broadcasting of advertisements and that for the said purpose it had purchased airtime for its two television channels from M/s FZLLC, a Dubai-based company, which was actually telecasting programmes and advertisements from its own equipment. And such an activity on its part not related to broadcasting of the advertisement was not liable to sales tax. It may be noted that broadcasting of advertisements on television is merely a single link in the whole chain called taxable services in relation to advertisements on TV; every part/activity which leads to provision of this services would form its integral part and would be so considered in law. More so, the petitioner does not consist of a single company engaged only in booking of the advertisements, but is a part of a media conglomerate known as 'Jang Group' which owns several newspapers, magazines and satellite television channels and has landing rights licenses issued by Pakistan Electronic Regulatory Authority for free to air satellite TV channels. The petitioner shares common ownership with M/s FZLLC International Media Corporation, which allegedly is engaged in broadcasting of the advertisements booked and supplied by the petitioner, and which is named as the principal in the landing rights licenses held by the petitioner. The origin of providing services of broadcasting of the advertisements to advertisers started from Pakistan. The advertisements of Pakistan-made items for the viewers in Pakistan were being broadcast / telecast on the two Pakistan-based satellite television channels of the petitioner, Geo and Geo News. The petitioner is a registered person under the domestic law, and it is the reason it succeeded in booking advertisements of the advertisers who were Pakistan-based and whose primary target was Pakistani viewers. By all appearances, the activity of provision of such services which are taxable under 2000 Ordinance originated in Pakistan and due to such fact the petitioner was able to charge and collect the sales tax from its customers (advertisers). Of relevancy thus would be these facts and circumstances for determining the charge of sales tax on services of advertisements within the scope of item 2 of the schedule. The place or the equipment used for broadcasting advertisements would be irrelevant. Besides, no one has disputed that the petitioner as defined in PEMRA Ordinance is electronic media, which is further evidenced from the licenses of landing rights for its satellite television channels granted by the Pakistan Electronic Media Regulatory Authority. As per clause (hc) of section 2 of PEMRA Ordinance electronic

media includes the broadcast media and distribution services. The broadcaster as per clause (d) of said section means a person engaged in broadcast media except broadcast journalist not actively involved in the operation, ownership, management or control of the broadcast media (this item i.e. broadcast media is included in the definition of electronic media). Therefore, virtually anyone who is electronic media, which by virtue of definition in clause (hc) shall include broadcast media, would be the broadcaster in terms of clause (d) of section 2 of PEMRA Ordinance.

20. Additionally, on this point, irrespective of our findings above holding the petitioner is liable to tax on account of it being engaged in the taxable activities, a reference to the impugned order of the learned Appellate Tribunal would be helpful. While discussing issue No.5 downwards, it has observed that the documents of the appellate (the petitioner) reveal that it is one of the many inter-related / associated companies and M/s International Media Corporation FZLLC is the part of this group. This group of companies has been created to defeat the object of (Pakistani) law. The petitioner is registered in Pakistan while M/s International Media Corporation FZLLC, which is a sister concern of the petitioner and is involved in the business of telecasting/broadcasting in the name of Geo, Geo Super and Aag, etc., is registered in Dubai. But the target audience of these companies is Pakistanis; their management is in the hands of Pakistani nationals, the advertisements being telecast are about Pakistani products and they are meant to be consumed in Pakistan. Their competitors i.e. the other TV channels in Pakistan are paying sales tax on services of advertisement being provided by them. Whereas in the case of the appellant by creating different companies, a plea has been taken that their Pakistani arm (the petitioner) is not telecasting/broadcasting the advertisements and thus it is not liable to pay sales tax, which if accepted would be nothing but a sheer discrimination to their competitors. To us, in essence, these findings of the learned Appellate Tribunal mean that the manifest purpose of the petitioner to establish a sister concern in Dubai (M/s FZLLC), the broadcasting operation of which is primarily and principally directed to Pakistan, was to evade legislation in respect of sales tax applicable to domestic broadcasters. And when the manifest object of the broadcaster for doing such an activity is to evade tax, the legislation levying tax on the domestically originated transmission would be equally applicable to the programmes, advertisements, etc. which are being booked and supplied by the domestic broadcaster to one of its arms established aboard for the purpose of broadcasting the same on its TV or radio based in Pakistan. These findings appear to formulate a principle

thereby preventing such domestic broadcasters having established an arm abroad largely for transmission of programmes, etc. to domestic viewers from avoiding obligations under the law in respect of domestic transmission of programmes, etc. This principle is very much relatable to the case which the petitioner has tried to establish before us; that it has only booked the advertisements in Pakistan that were broadcast by a foreign company. Because, the purported foreign company as is held by the Appellate Tribunal after examining the relevant documents is a sister concern of the petitioner which manifestly was established abroad for avoiding domestic legislation relating to levy of tax on the services of advertisements. It may be stressed that the above position i.e. M/s FZLLC is a part of the petitioner's group has not been denied by the petitioner in these proceedings. We therefore find the finding of Appellate Tribunal relevant and tend to agree with them and make them a part of this judgment.

21. Besides, the petitioner does not seem to be seriously disputing the fact that it has been engaged in providing of services of advertisements on television channels which is leviable to tax and which it has been collecting and depositing with the government. In its reply dated 27.11.2006 (Page 309 of CP No.D2798/2009) to the first show cause notice dated 18.11.2006, the petitioner has admitted in paragraph 3 that it "***has been engaged in providing/rendering the services of Advertisement on T.V. & duly registered under Section 14 of Sales Tax Act, 1990 vide Registration No.12-00-9802-09-64***", and that it has maintained relevant sales tax record under section 22, 23 and 26 of the Act. Although the petitioner has made a claim of making certain payments in respect of sales tax but does not deny making short payment in this regard. It has further undertaken to pay balance amount but not in a bullet payment due to alleged financial constraints. In addition, the petitioner has asserted that it is not liable to pay default surcharge under section 34 of the Act because the omission to pay the sale tax was not deliberate and it did not intend to evade the sales tax liability. Lastly in the reply, the petitioner has contested allegation of violating provisions of section 2 (37) of the Act on the ground that it had regularly filed the sales tax returns declaring correctly and with bona fide intention all the information about supplies/purchase. A reading of this reply besides showing the petitioner is duly registered under the 1990 Act points out to an admission of certain facts by it. That it is engaged in providing taxable services to other persons; that on that account it has collected the sales tax amount from its customers but not paid it in full to the government; that it has short paid

amount of sales tax to the government; that against it there is still an overdue amount of sales tax which it is ready to pay but in installments. We may further add here being relevant to the point in hand that the fact of collecting sales tax amount by the petitioner from its customers is also evident from the Sales Tax & Fed. Excise returns of those companies filed by FBR along with its counter affidavit (Page 379 to 413 of CP No.D2798/2009) indicating payments of sales tax to the petitioner. Record further shows that along with its reply to the show cause notice, the petitioner filed a schedule for paying the overdue amount but could not comply with its time frame and committed default. When we confronted all these facts to the petitioner's counsel and asked him how the petitioner could take a different plea to what it had already taken in the adjudicating proceedings, he replied that the petitioner initially was not aware of the legal position and paid the tax, but such fact not sanctioned by law would not run against the petitioner because no estoppel runs against the law, if there is no obligation in law on a person to fulfill for doing a certain activity, the same cannot be forced upon him just because he discharged the same previously. But we don't find ourselves persuaded by this argument, for the question in hand is not purely related to law. The incidence of tax that is a fact had been passed on and the petitioner had already collected the tax amount from its clients. The petitioner did not require any special knowledge of law in these circumstances to understand that the amount which it had collected in the capacity of a collecting agency on behalf of the government was to be transferred to it, but the petitioner did not do so and retained it unjustly. Section 3B of 1990 Act, which deals with such a situation, provides for in clear terms that even if a person collects the amount of tax or charge under misapprehension of any provisions of law, he is bound to pay the same to the government. The scheme of said provision of law (3B of 1990 Act) does not leave any room for anyone to refuse to pay on any excuse be it misapprehension of law or otherwise the amount of sales tax collected by him to the government when the incidence of tax has been passed on to the consumer. It becomes his duty to transfer the collected amount of tax to the government within a time stipulated in law, but the petitioner as the record stands did not abide by *ibid* provision of law and retained the amount illegally. Besides, we have already held that the petitioner by booking and relaying advertisements on its satellite television channels had provided services to other persons (advertisers), which in terms of the Act was a taxable activity and which fact it has admitted in its reply to the show-cause notice. The petitioner's plea of ignorance of law seen in the light of such findings would seem nothing but simply an excuse to evade paying tax which the petitioner had

already collected knowing well that the services of advertisements which it was providing to other persons were leviable to tax in law. We, therefore, are of the view that there is no substance in the contention of the petitioner that it had acted under misapprehension of law to collect the sales tax from its clients (advertisers); and more so no justification at all to retain tax-amount so collected.

22. It has now become obvious that even before the subject controversy could erupt between the parties, the incidence of tax had already happened and the petitioner had collected sales tax amount of the relevant period from the customers (advertisers). The tax amount which the petitioner collected as a collecting agency was retained by it illegally. This indeed resulted in double loss to the government, on the one hand the persons who paid sales tax to the petitioner claimed input tax adjustments on the basis of invoices issued to them for the amount of tax paid on account of release of advertisements on TV, and on the other the petitioner did not transfer the said amount of tax to the government. It is important to note that sales tax is an indirect tax, burden of which is to be borne by the end consumer. After such burden has been passed on to the end user and the amount is so collected, it becomes duty of the vendor to pass on the same to the government accordingly. The vendor has no legal authority to hold on to the amount of sales tax which he recovers from the purchaser as an agent of the government. Here it is not the case before us that the petitioner had not collected the sale tax and the incidence of tax had not been passed on to the end user. But the petitioner consecutively for two years (July 2004 to June 2006) collected such tax amount from its clients without showing the same in full in its monthly sales tax returns, and when the tax authorities detected such underpayments in monthly sales tax returns issued the petitioner a show-cause notice. The petitioner in reply admitted making short payments and promised to make good of the balance amount through installments but did not keep such promise and defaulted. In the consequent adjudicating proceedings, the petitioner lost and was directed to not only pay the overdue principle amount but also penalty and default surcharge. But this time also he failed to oblige and instead filed the constitution petitions including the ones in hand in the years 2009 and 2010 respectively. All these years since then, the petitioner has retained sales tax amount collected by it from its clients, it is self-evident that by such retention the petitioner has unjustly enriched itself to the detriment of people's welfare upon which otherwise that amount of tax would have been spent by the government. This all clearly

suggests a deliberate attempt of the petitioner to evade continuously paying tax.

23. Learned counsel for the petitioner in his arguments drew our attention to a letter dated 20.07.2007 (available at page No.185 of CP.No.D-2798/2009) by the then Central Board of Revenue communicating to Chief Executive, Independent Medial Corporation (Pvt.) Ltd. Karachi (the petitioner) acceptance of the schedule of payment of short paid amount of sales tax through installments, and contended that once the petitioner was granted such a facility which it availed, no penalty and additional tax/default surcharge could be imposed on it. In our view, this may have been a ground worth consideration only if the petitioner had paid all the installments accordingly as per schedule. The learned appellate forum in its order dated 15.05.2007 has also discussed upon this fact and has observed that the petitioner got the facility of payment in installments, but failed to keep the schedule of such installments. So not only in the present proceedings but in the adjudicating proceedings also the petitioner failed to establish compliance of the said letter on its part. Therefore, it is obvious that the petitioner, having committed default, was not entitled to claim any of the proposed benefits or exemption from penalty and default surcharge under the said letter. Be that as it may, we have considered the said letter on its own merits and are of the view that the acceptance of short paid amount was subject to three conditions i.e. ***(i) each installment is paid by the due date; (ii) there is no more short filing in future; and (iii) default surcharge will be calculated and paid with the last installment.*** It is also evident in the letter that if any of the conditions were not met by the petitioner; such facility of payments in installments would stand withdrawn. As per these conditions which were not disputed, the petitioner was required (i) to abide by strictly the schedule of payments; (ii) to not commit short filing in the future; and (iii) to pay default surcharge to be calculated with the last installment. So even if it is presumed that the petitioner obeyed all the conditions contained in the letter, yet it was not exempted from paying default surcharge that was to be calculated with the last installment. The payment of default surcharge was non-condonable in all the circumstances and the petitioner had no chance to avoid it. We therefore do not agree to the contention of learned counsel that the petitioner's alleged availing of a facility of installments in terms of said letter would save it from paying default surcharge and penalty.

24. As to learned counsel's contention that the petitioner availed the benefit of amnesty scheme under the notification dated 17.04.2014 of

Sindh Revenue Board (SRB) (available at page 517 of CP No.D-2798/2009) granting exemption of the whole penalty amount and 95 percent of default surcharge on payment of entire principle amount plus 5 percent of the outstanding default surcharge. As such, nothing such as principal amount, penalty or default surcharge is outstanding against the petitioner and nothing in this regard can be demanded from it. It may be said that the subject transactions took place prior to enactment of the Sindh Sales Tax on Services Act, 2011 ('2011 Act') which led to the formation of SRB. Before the year 2011, the FBR was competent to administer and collect sales tax under the 2000 Ordinance and transfer it to the province of Sindh accordingly. The 2011 Act was promulgated on 10th June 2011 and admittedly it has no retroactive effect. The subject notification stipulating exemption of penalty, etc. on payment of principal amount plus 5 percent of default surcharge was issued under section 45 of 2011 Act and as such would be strictly considered within the context and scope of that law, which would mean that this notification has no retrospective effect either insofar as the period before the year 2011 is concerned. For this reason, and this is irrespective of whether the petitioner has paid the entire principal amount of the tax which is one of the conditions as both FBR and SRB have disputed this fact, in our view this notification would not cover the overdue amount of sales tax or any penalty, etc. therefrom on the transactions that took place prior to the year 2011 and to grant certain amnesty thereon. That being the case, we are of the humble view that the petitioner's compliance, if any, of the terms of that notification would not help it wipe off its liability to pay penalty and default surcharge as adjudicated by the forums below.

25. The petitioner has also claimed exemption from default surcharge and penalties on account of having availed an amnesty scheme under SRO # 648 dated 25.06.2011 (available at page 511 of CP. D-No. 2798/2009) by paying the entire outstanding principal amount of sales tax by the cut-off date i.e. 30.06.2011 as per its lone condition. FBR in response to such claim has filed a statement disclosing that the petitioner had paid an amount of Rs.665,611,300/- on 30.6.2011 which was outstanding in respect of tax periods from October 2007 to June 2008. However, the petitioner failed to pay Rs.78,830,963/- that was overdue in relation to tax periods from January 2007 to September 2007. Besides, a liability of Rs.126,498,796/- for tax periods from July 2004 to June 2006 as determined by Order-in-Original dated 04.01.2007 is outstanding against the petitioner. The aforesaid figures conspicuously indicate that the petitioner did not pay the entire dues in response to said amnesty scheme

as claimed but it only made a payment towards dues outstanding against it in respect of tax periods from October 2007 to June 2008. This payment obviously would save the petitioner from the adverse consequences of only that period, which otherwise were to be followed as per law. The said statement also shows that the petitioner failed to pay further tax liability in respect of tax periods from January 2007 to September 2007, besides an amount of Rs.126,498,,796/- for tax periods from July 2004 to June 2006 is due against it. This shows that even if aforesaid payment made by the petitioner is added up in an amount of Rs. 8,00,00,000/- (rupees eight crore) which the petitioner deposited with Nazir of this court in compliance of the order dated 06.04.2011, yet there would be outstanding amount of tax against the petitioner. The only argument of learned counsel for the petitioner in this connection while relying on the case of ***Muhammad Hanif Abbasi versus Imaran Khan Niazi and others (PLD 2018 SC 189)*** was that after the petitioner availed the amnesty scheme under SRO # 648 dated 25.06.2011, it would not be burdened with any overdue tax, default surcharge, penalty or be prosecuted. There is no cavil to this proposition but here the amnesty from penalty and default surcharge was contingent upon (i) payment of outstanding principal amount of sales tax or federal excise duty, and (ii) such payment made on or before 30.06.2011. The above referred statement of the FBR clearly indicates that the petitioner had not paid the entire overdue amount of tax in respect of certain tax periods detailed above till 30.06.2011 as required and in view of the matter it is obvious that the petitioner is not entitled to the fruits of that scheme pertaining to the tax periods of which it did not pay the sales tax.

26. Meanwhile, the Sindh Revenue Board has filed an application (Misc. application no.27365/2017) under Order 1 Rule 10 CPC to be impleaded as a party in these matters on the grounds, *inter alia*, that under 2000 Ordinance, the FBR would collect sales tax on behalf of SRB and then deposit it in the exchequer of Sindh Province. But after the enactment of the Sindh Sales Tax on Services Act, 2011 which repealed 2000 Ordinance, the SRB has been performing that duty accordingly; as such SRB is now the relevant body for receiving the overdue amount of sales tax. That section 83 of 2011 Act is the saving provision whereby all the subject transactions that took place during life of the 2000 Ordinance have been saved. That in view of such legal position the amount of sales tax which is due in respect of those transactions and the amount of Rs. 8,00,00,000/- (rupees eight crore) deposited by the petitioner with Nazir of the court may be ordered to be deposited with the SRB and not with the

FBR. The petitioner did not show any serious concern to this application and maintained that it mainly reflected a tussle between a federal and a provincial department. Learned Addl. Attorney General on this point submitted that it is an admitted position that prior to the year 2011 when SRB was constituted as a result of enactment of 2011 Act, the FBR would collect the sales tax amount in terms of 2000 Ordinance for onward remittance to the Sindh Government. The relevant law, therefore, applicable here would be 2000 ordinance and the FBR the relevant body to receive the overdue amount of sales tax, etc. from the petitioner. He, however, maintained that the FBR could be directed to transfer the amount so received to Sindh Government within a certain period in accordance with their past agreement in this regard. However, the FBR has opposed this application on the grounds that the SRB was constituted in the year 2011 only as a result of 2011 Act which has no retrospective effect, as such the SRB has no right to claim subject sales tax amount which accrued much prior to its coming into being and fell within the domain of the FBR. We have considered these assertions that were reiterated by the learned counsel for the FBR and SRB in their respective arguments. These matters were filed in 2009, and on 10th June 2011 the Sindh Sales Tax on Services Act 2011 was enacted leading to formation of the SRB in the same year. But the SRB since then remained silent and filed the listed application only in the later part of the last year i.e. 29.09.2017 for becoming a party in the proceedings with the claim as stated above. Regardless of the merits of SRB's claim which it needs to agitate in the proper proceedings, the silence of SRB from 2011 to 2017 is a circumstance which would adversely reflect on its plea and which admittedly in these proceedings filed by the petitioner challenging the vires of 2000 Ordinance and the rules thereunder besides impugning the order of the Appellate Tribunal cannot be adjudged. Nonetheless, we may observe that the subject transactions took place before the year 2011, and are saved under section 83 of 2011 Act. This saving clause would mean that the FBR which undisputedly was administering and collecting sales tax in terms of 2000 Ordinance on behalf of province of Sindh would still be the relevant body for the said purpose. Keeping in view this position, we do not think the SRB is a necessary party to be impleaded as one of the respondents in the present proceedings, especially as they will not be prejudiced and their share of the sales tax amount will, as before, be passed on to them by the FBR. Resultantly we dismiss the listed application (Misc. application no.27365/2017) and leave the SRB at liberty to avail a remedy according to law, if so advised. But as suggested by learned Addl. Attorney General we would like to direct the FBR that within

two months of receipt of the sales tax amount, penalty and default surcharge from the petitioner in terms of this judgment, it shall transfer the same in the same manner as it used to do before the year 2011 to the exchequer of province of Sindh accordingly. Needless to mention that the FBR while calculating the liability of sales tax in all respects against the petitioner shall adjust in accordance with law all the undisputed payments made by the petitioner from time to time including the ones which the petitioner paid in order to avail of some amnesty under the schemes discussed earlier in this judgment and the one which the petitioner deposited with the Nazir of this court in compliance of the order of this court dated 06.04.2011.

27. For the foregoing discussion, we find no merits in the constitution petitions in hand and dismiss them accordingly with no order as to costs. The questions of law proposed for our opinion under sections 47 of 1990 Act in the captioned special sales tax references are replied in positive and decided in favour of the respondent department. All the matters in hand are disposed of in above terms along with pending applications.

JUDGE

JUDGE

30-5-2018.