

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-138/2015

M/s Worldcall Telecom Limited ..... Appellant

**Versus**

1/ Commissioner (Appeals), SRB, Karachi  
2/ Assistant Commissioner-1, SRB, Karachi ..... Respondents

Mr. Nasir Gulzar, FCA and  
Mr. Khurram Shahbaz Butt, Advocate ..... For the Appellant

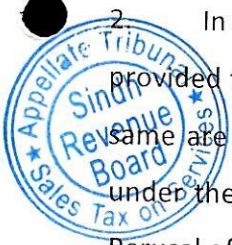
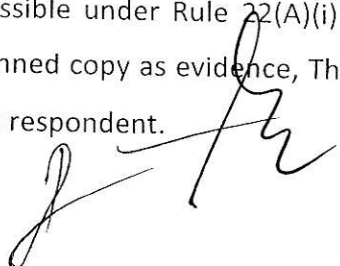
Ms. Lubna Najmi, Assistant Commissioner, SRB, Karachi and  
Mr. Vicky Kumar Dhingra, Assistant Commissioner, SRB, Karachi ... For the Respondents

Date of hearing 03.04.2018  
Date of Order 06.04.2018

**ORDER**

**Razia Sultana Taher:** This appeal has been filed by the appellant challenging the order in appeal No.14/2015 dated 16<sup>th</sup> January, 2015 passed by the Commissioner (Appeals) in appeal No.99/2014 dated 22.08.2014 confirming the order in original No.441 of 2014 dated 23<sup>rd</sup> July, 2014 passed by the Assistant Commissioner, SRB.

2. In short, the facts of the case as stated in the order in original are that the appellant has provided the services of telecommunication for the tax periods July 2011 to February 2014. The same are chargeable to Sindh Sales Tax at the rate of 19.5% on the value of taxable services under the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as SSToS Act, 2011). Perusal of "Annexure A" filed by the appellant showed that they have claimed a total amount of inadmissible input tax adjustment / deduction amounting to Rs.11,818,556/- in respect of goods / services that were not exclusively used in providing or rendering telecommunication services in Sindh or related to other jurisdiction i.e. (outside Sindh). The said input amounting to Rs.11,818,556/- shall not be admissible under Rule 22(A)(i) and 22(A)(viii) of the Rules,. The appellant also failed to file the scanned copy as evidence, Thereafter show cause notice dated 28<sup>th</sup> March, 2014 was issued by the respondent.



3. The concerned Assistant Commissioner in the order in original No.441/2014 dated 23<sup>rd</sup> July, 2014 concluded that the registered person were claiming input tax against the amount withheld by the withholding agent on account of advertisement services against the output of telecommunication services which is incorrect and invalid. The services of security agencies has been charged and collected at the rate of 10% of the value of taxable services subject to the condition that input tax credit shall not be admissible under notification No.SRB-3-4/6/2013 dated 18.06.2014 readwith Rule 22A(viii) of the Rules. The goods that were not used or consumed in providing or rendering telecommunication services in Sindh shall not be admissible in terms of Rule 22A(i) of the Rules and the registered person failed to provide copies of Karachi Electric Supply Company, Hyderabad Electric Supply Company and Islamabad Electric Supply Company. Input tax adjustment shall not be admissible on ground that they failed to produce evidence for the claim of said input tax adjustment. Concluding that the appellant adjusted inadmissible input tax adjustment / deduction during the tax periods July 2011 to February 2014 under provision of rule 22A(i) and 22A(viii) of the Rule and held that an amount of Rs.11,818,556/- was recoverable alongwith default surcharge under section 44 (to be calculated at the time of payment) and imposed penalties under clauses 2 and 3 of the table under section 43 of the Act amounting to Rs.160,000/- and Rs.590,928/- and penalty of rs.25,000/- under section 43(6)9d) of the Act.

4. The said order of the Assessing officer was challenged by way of filing of appeal before the Commissioner (Appeals) SRB who dismissed the appeal and upheld the order in original.

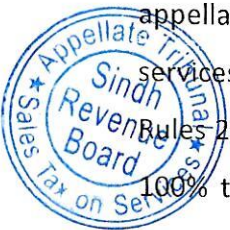
5. During the course of hearing both parties agreed for reconciliation. Thereafter, the respondent submitted that the disputed amount pertains to input tax claimed on advertisement which is Rs.6,607,295/- secondly input tax claimed on security services which stands at Rs.1,228,640/- and the third is input tax claimed on supply of bottled water (beverages) Rs.10,166/-. As regards input tax claimed on electricity. The appellant has agreed to pay the amount 'of other than Sindh' which comes to Rs.288,804/-. The respondent clarified making referral to report received on 23.11.2017 that. – Serial Numbers 1 and 6 pertaining to Input tax of electricity and supply of diesel / petrol has been allowed Rs.443,569/- plus Rs.640,882/-, the total comes to Rs.1,084,451/- thus the appellant is required to pay the balance amount of Rs.10,734,105/-. The respondent further submitted that in respect of input claimed as at Sr. No.3 the appellant has provided most of the services before the enactment of





SSToS Act, 2011 and tax has been deposited in FBR and now the appellant has claimed the tax with SRB which is not justified, the same is invalid and it tantamounts to tax fraud. Added that the record submitted by appellant when compared with the record of SRB the same revealed that the recipient of services have not deposited the tax amount referred to under section 9(1) read with section 3(1) of the SSToS Act, 2011. The appellant is liable to pay the SST, input tax claimed against its own services is invalid and inadmissible. Taking Sr. No.4 – same comments as given in reconciliation report. For Sr. No.5 submitted input tax related to water, which is inadmissible as per rule 22A(ia)(d) of the SSToS Rules, 2011. The case pertains to July 2011 to February 2014 it explicitly denies beverages which covers mineral water under customs law.

6. The appellant represented by Mr. Nasir Gulzar FCA submits that Sr. No. 1 and 6 has been agreed by the respondent. Sr. No.2 is also agreed and the same is not pressed but so far as serial numbers 3, 4 & 5 are concerned, the same have not been agreed. Regarding Sr. No.4 and 5 it is submitted that just like the respondent department has allowed Sr. No.6 i.e. input tax on diesel and petrol because these were used at the Tower Sites (BTS) (Based Transreceiver station) from here all taxable activities are generated if it is out of electricity, diesel is used to keep the equipment in running condition likewise water and security services is provided at those sites to keep the equipment in safe and secure condition, bottled mineral water is given to the guards. In case security is removed from sites there is hundred percent chances of theft of equipment resulting in discontinuation of taxable services. As far as the notification is concerned in respect to No. given at Sr. No.4, it relates to service provider who are charging tax at lower rate and not to the receiver of services and referred to Section 15 A(1)(f). The appellant's counsel argued that so far as Sr. No.3, is concerned these relates to advertisement services and tax on this is to be withheld by the service recipient under the Withholding Tax Rules-2011. Definition is under Rule 2, it is liability of person receiving the services to withhold 100% tax and as such does not cover under section 9(1) of the SSToS Act, 2011 read with section 3(1) – Moreover, under a misconception, the provider of services paid the SST instead of showing the tax withheld by the recipient of services on the SST return. Thereafter when the withholding tax certificates were received from recipient of services mentioning the CPR no: the appellant claimed the said amount as input tax adjustment. Based on withholding tax certificates, reconciliation was provided to the respondent / department showing amount Rs.3,457,444/- as paid in Sindh Sales Tax treasury and Rs.2,655,910/- as paid to FBR (Federal



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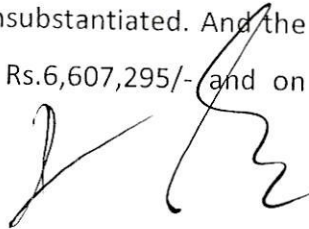
Sales Tax) which is prior to July 2011 i.e. promulgation of SSToS Act, 2011. As far as the amount of Rs.2.6 million paid to FBR, the appellant's point of view is that FBR have paid this amount to Sindh Government through the distribution from the common pool fund. According to their share and as such this amount has been received by the Sindh Government and hence justified in claiming the amount as input tax and thus there is no point of tax fraud. The counsel added that as far as Rs.3.4 million is concerned which has been duly deposited in SRB, the appellant is justified to claim the amount as input in the Sales tax returns as such there is also no point of tax fraud. The department has full access to review the Sindh Sales Tax returns of the service recipients for these amounts and can check the tax paid against tax invoices raised by the service provider.

7. Both parties submitted that as regards Sr. No.3, the appellant is in the process of reconciliation with the respondent. Mr. Khurram Shahbaz Butt submitted that liability of admitted amount stood at Rs.2,888,004/- out of which the department has recovered Rs.1,043,204/- balance of cheque amounting to Rs.1,844,800/- which is approximately 25% of the total demand and prayed for stay against an amount of Rs.7 million under reconciliation with the Assistant Commissioner.

Finally partial reconciliation reached, respondent submitted report which shows an outstanding amount of Rs.4,962,702/- in respect of advertisement services. Previously the said amount stood at Rs.6,607,295/- and now the same has been reduced to Rs.4,962,702/-. The appellant submitted that the amount withheld by service recipient is Rs.2,655,910/- which pertains to the period prior to the promulgation of SSToS Act, 2011 and charged under Sindh Sales Tax Ordinance, 2000. The second amount of Rs.3,951,385/- withheld by different service recipients and out of which an amount of Rs.1,644,593/- same has been accepted by the respondent.

Further the appellant's advocate submitted that an amount of Rs.837,477/- has been mistakenly deposited by the withholding agent in FBR and no credit is being given by the respondent on this amount and prayed that he is willing to pay Rs.4,125,064/- if penalty and default surcharge is not pressed.

The respondent representative explained that the verbal statement being made by the learned Advocate have to date remained unsubstantiated. And the efforts have been made efforts to reconcile the disputed amount of Rs.6,607,295/- and on the Tribunal's directives reached





reconciliation to the extent of Rs.1,644,593/- and the remaining amount of Rs.4,962,702/- remains payable in respect of inadmissible input tax claimed on advertisement services.

8. We have heard the learned representatives of both sides and perused the record made available to us. Initially, the respondent had disallowed input tax claimed on items appearing at Sr. No. 1 to 6, i.e. Sr. No. (1) Input tax on Electricity (Karachi and Hyderabad), Sr. No. (2) Input tax claimed on Electricity (Outside Sindh), Sr. No.(3) Input tax claimed on advertisement, Sr. No.(4) Input tax claimed on security services, Sr. No.(5) Input tax claimed on supply of bottled mineral water, Sr. No.(6) Input tax claimed on supply of diesel / petrol

Thereafter, the respondent department submitted report showing that in respect to items appearing at Sr. No. 1 and 6 - input tax is admissible in terms of section 15 of the SSToS Act, 2011, the said amount of Sindh Sales Tax comes to Rs.443,569/- and Rs.640,882/- respectively. In respect to Sr. No: 2, the appellant agreed to pay the tax the same being inadmissible on account of having been purchased outside Sindh, it involves Sindh Sales Tax amounting to Rs.2,889,004/-

9. Presently the dispute remains in respect to Sr. No.3,4 and 5. We take up Sr. No.4, the learned appellant's counsel has argued that they are entitled to claim input tax adjustment on security services for the reason that if the security services are removed there is a likelihood of theft taking place on the equipment. The counsel contended that the notification cited by respondent refers to the services provider who charged at the reduced rate of 10%. The argument forwarded by the appellant's counsel is unfounded, the services of security agencies has been charged and collected at the rate of 10% of the value of taxable services subject to the condition that input tax credit shall not be admissible under notification No.SRB-3-4/6/2013 dated 18.06.2014. Furthermore, as per rule 22A(viii) of the Sindh Sales Tax on Services Rules, 2011 "A registered person shall not be entitled to claim input tax adjustment in respect of goods and services used or consumed in a service liable to tax rate lesser than the [16 percent] of the charges or to a specific rate of tax not based on value" Thus the input tax adjustment claimed against the services of security agencies shall not be admissible under notification No.SRB-3-4/6/2013 dated 18.06.2014 read with rules 22A(viii) of the SSToS Rules, 2011.

10. As regards disallowance of input tax claimed on supply of bottled mineral water to the security guards, the appellant argued that water is not beverage and hence the same cannot be



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disallowed. We hold that the same has rightly been disallowed under Rule 22A(ia)(d) SSToS Rules, 2011 which reads as 'A registered person shall not be entitled to claim input tax adjustment in respect of:-- following goods and services, required otherwise than as stock in trade, by a registered person;

d) food, beverages.....

The term stock in trade has been explained as the typical subject or commodity a person, company or profession uses or deals in .

Definition of stock of trade by Merriam-webster <https://www.merriam-webster.com->

1. "the equipment, merchandise or materials necessary to or used in a trade or business
2. Something that resembles the standard equipment of a tradesman or business". In the instant case, where the appellant is providing services of 'telecommunication' the same has no connectivity. Visit to site bottledwater.org "Bottled water is a great beverage choice for hydration and refreshment because of its consistent safety, quality good taste and convenience". Furthermore, it was subsequently explained that beverages are not covered even if the same are for personal consumption of the registered person.

11. As regard Sr. No. 3, it relates to advertisement services. The appellant's counsel contended that the tax against advertisement services is to be withheld by the service recipient under the Sindh Sales Tax Special Procedures (Withholding) Rules, 2011. He further submitted that under a misconception the service provider paid the Sindh Sales tax instead of showing the tax withheld by the different service recipient. On the other side, the respondent contended that record submitted by the appellant and the electronic record available with Sindh Revenue Board showed that the recipients of services have not deposited tax amounts with SRB at all and further submitted that without prejudice that most of the services have been provided prior to the promulgation of the SSToS Act, 2011 and the tax have been paid in FBR. The respondent added that further an amount of Rs.1,644,593/- has been reconciled from the amount of Rs.6607295/- and the remaining amount of Rs.4,962,702/-has not been reconciled and thus the same remains payable against Sr.No. 3. The appellant's advocate has unconvincingly tried to bifurcate the amount stating that some amount was deposited prior to the promulgation of SSToS Act, 2011 and some portion of the amount was deposited subsequently.





We have reached to the conclusion that the appellant has not documentarily rebutted the stance of the respondent on the issue at Sr. No.3 and thus the same have remained unsubstantiated at the level of the appellant.

12. However, if the appellant deposits the principal amount of Sindh Sales Tax involved within 30 days of the receipt of the said order, extreme leniency will be shown as special case and penalties imposed would not be required to be paid by the appellant. In so far, as the amount of default surcharge is concerned, we recommend that SRB may kindly consider exempting at least fifty percent (50%) of the amount of the default surcharge as special case, as it pertains to the initial stages of the coming into force of the new laws by exercising the powers under section 45 of the SSToS Act, 2011. In implementation of the Act and Rules, the purpose is not to create hardship but at the same time ensure proper and timely implementation of the laws and rules framed thereunder.

13. The impugned order in appeal is modified to the above extent as detailed in the preceding paragraphs.

14. The appeal is disposed of in the above terms.



**(Muhammad Ashfaq Balouch)**  
**JUDICIAL MEMBER**



**(Razia Sultana Taher)**  
**TECHNICAL MEMBER**

Karachi

Dated: 06.04.2018

Copies supplied for compliance:-

1. The Appellant through authorized Representative.
2. The Assistant Commissioner (Unit- ), SRB, Karachi.

Copy for information to :-

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

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**APPELLATE TRIBUNAL**  
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