

**BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD**

**Appeal No.AT-95/2016**

M/s Connect Communication (Pvt.) Limited ..... Appellant

VERSUS

1/ Commissioner (Appeals), SRB, Karachi and  
2/ Deputy Commissioner (Unit-3), SRB, Karachi ..... Respondents

Mr. Abdul Rahim Lakhani, Advocate and  
Mr. Sunil Ali Memon, Advocate ..... For the Appellant

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

Date of hearing 11.04.2018  
Date of Order 16.04.2018

**ORDER**

**Razia Sultana Taher:** This appeal has been filed by the appellant challenging the order in appeal No.203/2016 dated 23<sup>rd</sup> November, 2016 passed by the Commissioner (Appeals) in appeal No.99/2016 who upheld the Order-in-Original No 165 of 2016 dated 18<sup>th</sup> March, 2016 "to the extent of imposition of tax on the basis of assessment made being "short payment" with directives to "the appellant to pay the adjudged amount of tax, the default surcharge and the penalty forthwith".

2. In short, the facts of the case as stated in the order in original are that the appellant has provided / rendered taxable 'telecommunication services' for the tax period July, 2013 to June, 2014. The said services are covered under PCT heading 98.12 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as SSToS Act, 2011) and are chargeable to Sindh Sales Tax at the rate of 19.5 %. Perusal of the annual audited financial statements showed the value of taxable services at Rs.295,871,967/- and Sindh sales tax payable at Rs.57,695,034/- whereas the record with SRB showed that the registered person declared a total amount of Rs.17,391,929/- against the annexure 'c' of Sales tax returns for the tax period July, 2013 to June, 2014. Thus short paid amount of Rs.40,33,105/- was recoverable.

3. The concerned Assistant Commissioner in the order in original No.165/2016 dated 18<sup>th</sup> March, 2016 concluded that the appellant declared a total amount of Rs.17,391,929/- against annexure 'C' of Sales tax returns for the tax period July, 2013 to June, 2014 against the actual liability of Rs.57,695,034/- and thus short paid an amount of rs.40,303,105/- that the tax profile showed that the appellant adjusted 100% input tax adjustment for the tax period July, 2013 – June, 2014, which proves that the appellant had provided taxable services during the said tax period. The appellant was ordered to pay Sindh Sales tax amounting to Rs.40,303,105/- along

with default surcharge under section 44 (to be calculated at the time of payment) of the SSToS Act, 2011 and imposed penalty of Rs.2,015,155/- under Serial No.3 of the table under section 43 of the SSToS Act, 2011.

4. The said order of the assessing officer was challenged by way of filing of appeal before the Commissioner (Appeals) SRB who upheld the order in original to the extent as detailed in paragraph 1 of this order.

5. During the course of hearing, the appellant's advocate submitted that reconciliation of the confronted amount in the show cause notice and reconciliation with amount reflected in the Audited Financial Statements have been provided at the adjudication and appellate stage. The 'Shared Internet Services' reflected in the Audited Financial Statements for the year ended June 30, 2014 shown as exempt- the same being revenue earned from Home users of internet services and no package exceeds the monthly limit of Rs.1500/- and is exempt as per Exemption Notification No.SRB-3-4/MTP/07/2013 dated 1<sup>st</sup> July, 2013.

The appellant further submitted that in respect to 'Trade discount' – all the unlisted companies in Pakistan are legally bound to prepare accounts in conformity with the International Accounting Standards prescribed by SECP which requires to disclose turnover and deduction therefrom trade discount and sales tax. The appellant argued that installation fee was not taxable in 2013-2014. The shared internet services of Rs.165,699,261/- and trade discount Rs.31,196,613/- and installation fee Rs.6,208,514/- were not charged to Sindh Sales tax under tariff heading telecommunication service 98.12.

6. The respondent Assistant Commissioner representing the department submitted that on the directives of the Tribunal both parties carried reconciliation. The Assistant Commissioner submitted that nine files containing data / details of shared internet services had been provided which when examined showed that transactions stood at less than Rs.1500/- per customer and the said service is exempt in terms of notification No.SRB-3-4/7/2013 dated 18.06.2013 before the amendment dated 01.07.2014. The respondent agreed to the contention of the appellant that the assessing officer double counted the trade discount amount.

The respondent argued that services provided or rendered in respect of internet services are chargeable to Sindh Sales Tax on 'gross consideration' received and the installation services are provided in relation to internet services hence the same are taxable. He further explained in respect to trade discount - that the discount offered by the appellant does not meet with the preconditions as per section 5 (b) of the SSToS Act, 2011 and submitted that telecommunication and all other services listed in the Second Schedule are chargeable to tax on the gross consideration received by the service provider / appellant and added that telecommunication services are defined in Section 2(97) of the SSToS Act, 2011 wherein telecommunication system also covers in the said definition. The respondent after going through the data on shared internet services concluded that the same is exempt amounting to Rs.165,699,261/- and the now payable amount of Sindh Sales tax stands at Rs.1,908,409/- along with default surcharge and penalties.

7. We have heard the learned representatives of both sides and perused the record made available before us. The appellant had raised four issues, out of which the two issues have been agreed by the respondent namely that the assessing officer double calculated the trade discount amount and secondly that all transactions pertaining to the 'shared internet services'

have value less than Rs.1500/- per month per recipient service and stand covered under notification No.SRB-3-4/7/2013 dated 18.06.2013 before the amendment dated 01.07.2014. As regards the issue of trade discount the appellant argued that their accounts are in conformity with the International Accounting Standards prescribed by SECP. The same be read with Fifth Schedule to the Companies Ordinance, 1984. On the other side the Respondent has explained that as per section 5(1)(b) of the SSToS Act, 2011, the value of taxable service is discount allowed on the preconditions that the amount of discount is shown on the Sales tax invoice and the discount allowed is in conformity with customary business practice. Whereas, in the instant case the learned advocate had agreed that the discounts offered by the appellant are "variable" to different clients, the same does not meet with the conditionalities set forth in Section 5(1)(b) of the SSToS Act, 2011. Furthermore, the advocate had also admitted that the appellant had not raised sales tax invoice which is evident from the statement and thus on this count also failed to meet with the preconditions laid down in Section 5(1)(b) of the SSToS Act, 2011. Hence the same is chargeable to Sindh Sales Tax on gross receipts. The appellant has not satisfactorily rebutted the argument put forth by the respondent in respect to Sindh Sales tax on installation services. Thus the same are taxable.

8. 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 a special case, penalty amount would not be required to be paid by the appellant and 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 case pertains to the initial stages of coming into force of the new law 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.

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

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

  
(Muhammad Ashfaq Balouch)  
JUDICIAL MEMBER

  
(Razia Sultana Taher)  
TECHNICAL MEMBER

Karachi

Dated:16.04.2018

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.

Certified to be True Copy

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD