

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-29/2017

M/s X-Nine Communications (Pvt.) Ltd. Appellant

Versus

1/ Commissioner (Appeals), SRB, Karachi
2/ Assistant Commissioner (Unit-21), SRB, Karachi Respondents

Mr. Moiz Mithaiwala, ITP For the Appellant

Mr. Zain Manzoor, Assistant Commissioner, SRB, Karachi For the Respondents

Date of hearing 30.04.2018

Date of Order 02.05.2018

ORDER

Razia Sultana Taher: This appeal has been filed by the appellant challenging the order in appeal No.55/2017 dated 26th April, 2017 passed by the Commissioner (Appeals) in appeal No.171/2016 modifying the order in original No. 291 of 2016 dated 29th April, 2016 to the extent as detailed in paragraphs 5 and 6 which reads as "However, since the amount of tax imposed has been reduced to Rs.6,798,510/- due to reconciliation of Rs.142,780/- as paid by the service recipients, therefore to that extent the penalties of offence No.3 and 6(d) shall also reduce. Accordingly the penalty of offence No.3 @ 5% shall be calculable as Rs.339,926/- and the penalty of offence No.6(d) shall be equal to the amount of tax payable by the appellant i.e. Rs.6,798,510/-. For the given reasons the OIO is upheld principally to the extent of short payment of amount of Rs.6,798,510/- the default surcharge thereon to be calculated at the time of payment and the penalty as mentioned in para 4 above".

2. In short the facts of the case as stated in the order in original are that the appellant are registered as providing advertising agent services. Scrutiny of record revealed that having provided advertising agent services, the appellant received consideration amounting to Rs.44,471,442/- for the tax period from July 2013 to November, 2015 but failed to pay Sindh Sales Tax nor declared the same vide Sindh Sales Tax returns. Thereafter, a show cause notice bearing No.SRB-Com-IV/AC-21/X-Nine/2015/4358 dated 11.04.2016 was issued by the respondent.

3. The concerned Assistant Commissioner in the order in original No.291 of 2016 dated 29th April, 2016 observed and concluded that services provided or rendered in respect of advertising agent are chargeable to Sindh Sales Tax under Section 8 readwith tariff heading 9805.7000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as SSToS Act, 2011) and the term advertising agent stands defined in Section 2(3) of

the SSToS Act, 2011. The appellant admitted to having provided the services amounting to Rs.44,471,442/- in respect of print media or newspaper etc. but failed to make the payment of Sindh Sales Tax and also failed to file the Sindh Sales tax returns. The appellant had accepted that an amount of Rs.6,181,275/- is payable by them. The appellant was ordered to pay the Sindh Sales tax amounting to Rs.6,941,290/- alongwith default surcharge under section 44 (to be calculated at the time of payment) and penalties amounting to Rs.347,065/- under clause 3 and Rs.6,941,290/- under 6(d) and penalty of Rs.230,000/- under serial No.11 of the table to 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 modified the order in original to the extent as detailed in paragraph 1 of this order.

5. During the course of hearing, the appellant's authorized representative submitted that the Information and Archives Department of Government of Sindh paid an amount of Rs.6.9 million against M/s X-Nine Communication as 100% withholding on Sindh Sales Tax, therefore the due amount of Sindh Sales tax has been paid by the said department of the government of Sindh. The appellant representatives further submitted that out of the amount of Rs.760,015/- an amount of Rs.142,780/- has been reconciled and for the remaining balance the relevant documents would be provided to the respondent by 15.03.2018.

The respondent representative Mr. Zain Manzoor, Assistant Commissioner submitted that the total amount of Sindh Sales tax as given in the order in original has been entered in the photocopy of letter of Sindh government without any proof of invoices, tax periods and further breakups. Both parties were directed to reconcile the amount duly substantiated.

6. At the time of final hearing on 30.04.2018, the Appellant's representative stated that he is a withholding agent and the services of appellant became taxable from 1st July, 2013 and it was a mistake on the part of appellant who charged tax but failed to make payment to SRB. The authorized representative further submitted that he is in possession of only a photocopy of letter of Government of Sindh, Information and Archives

The respondent stated that the most of the invoices pertained to the Sindh Sales Tax on Services (Withholding) Rules 2011 at that point in time the Sindh government was not qualified / competent to be a withholding agent. Both parties submitted that out of the amount of Rs.6,941,290/- an amount of Rs.6,181,275/- was admitted by the appellant before Commissioner (Appeals) and Assistant Commissioner as given in paragraph 10.4 of Order in Original and the balance amount of Rs.760,015/- remained disputed. Thereafter, documents were given by the appellant only to the extent of Rs.142,780/- and thus this amount stood reconciled and for the balance amount of Rs.617,235/- the same could not be reconciled for want of CPR or any other substantive document to show that the amount was received in the government exchequer to date hence, no relevant data has been made available which could show whether any amount has been received in the public exchequer and no further amount was shown as paid and hence stood as un-reconciled.

7. We have heard the learned representatives of both sides and perused the record made available before us. The appellant's representative admitted that the appellant had received the Sindh Sales Tax but mistakenly failed to deposit the Sindh Sales Tax due to Sindh Revenue


Board account. The fact remains that the appellant charged and collected tax and the same was not deposited in the SRB head of account.

Ample opportunities were given to the appellant's representatives to reconcile the amount by producing the relevant invoices / documents but could only produce relevant document to the extent of an amount of Rs.142,780/- and the balance remained unsubstantiated. The appellant's representative mere production of a photocopy of a letter from Section Officer of the Government of Sindh Information and Archives Department addressed to the Chairman Sindh Revenue Board, Government of Sindh dated 6th April, 2017 draws no connectivity to the present appeal case in absence of substantive documentary record. The appellant's counsel admitted to having charged the amount of tax but not having paid the same and the same was also admitted before the Commissioner (Appeals). We have no doubt in our mind, that the appellant had no right to retain the amount received by it as an amount of tax. The amount of tax belongs to the government and appellant was never entitled to retain the same for any reason.

8. In view of the foregoing discussions, we do not find any reason to interfere with the order in appeal. However, if the appellant deposits the Sindh Sales Tax involved within thirty days of the receipt of this order, we reduce the amount of penalty of offence No.3 @5% by fifty percent and waive the amount of penalty of offence No.6(d) and recommend that SRB may kindly consider exempting at least fifty percent (50%) of the amount of default surcharge as special case by exercising the powers under section 45 of the SSToS Act, 2011. The purpose is not to create hardship but at the same time ensure compliance and implementation of the laws and rules framed.

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) 02/05/18
TECHNICAL MEMBER

Karachi

Dated:02.05.2018

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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