

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-118/2018

M/s Telenor Pakistan (Pvt.) Ltd.....Appellant

Versus

Assistant Commissioner, SRB, KarachiRespondent

Date of Filing: 17.12.2018

Date of hearing: 17.01.2019

Date of Order: 17.01.2019

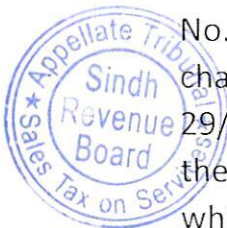
Mr. Arsalan Siddiqi, ACMA and Mr. Junaid Siddiqi, CIMA for appellant.

Mr. Javed Ali, AC-SRB for Respondent.

ORDER

Justice (R) Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order dated 17.12.2018 passed by the Commissioner (Appeals) in Appeal No. No.29/2015 under section 58 (4) of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) refusing to extend the stay beyond sixty days.

1. The facts of the case are that Assessing Officer passed order-in-original No. 36/2015 dated 16.01.2015 against the appellant which was challenged before Commissioner (Appeals) by way of filing Appeal No. 29/2015 which was dismissed on 19.06.2015. The appellant challenged the appellate order before the Tribunal by filing Appeal No. At-210/2015 which was allowed vide order dated 24.03.2016 and the case was remanded to Commissioner (Appeals) to first determine the value of service and then to determine the amount of tax payable by the appellant.



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2. The Commissioner (Appeals) during pendency of appeal before him granted stay on 26.09.2018 and vide impugned order dated 17.12.2018 refused to extend the stay order.
3. Mr. Arsalan Siddiqui the learned representative submitted that this Tribunal vide its order dated 24.03.2016 remand the earlier Appeal No. AT-29/2015 to Commissioner (Appeals) to determine the value of service regarding funds transfer and then to determine the amount of tax. He submitted that though short point was involved, but the Commissioner (Appeals) has failed to dispose of the appeal even during a period of more than two and a half year. He then submitted that at one hand the Commissioner (Appeals) has failed to dispose of the appeal within a reasonable time and on the other hand the AC Mr. Vicky Dhingra knowingly that the appeal is pending has issued recovery notice to the bankers of the appellant situated at Islamabad for attachment of Bank Accounts of the appellant. He also submitted that the AC of SRB has no jurisdiction to attach the bank accounts of appellant situated at Islamabad, outside the jurisdiction of SRB. He also submitted that force recovery without hearing of the matter by an Independent forum is against all norms and against the judgments/orders of superior courts.
4. Mr. Arsalan also submitted that the appeal pending before Commissioner (Appeals) was taken up yesterday i.e. 16.01.2019 and was adjourned to 19.02.2019 for filing reconciliation report by the appellant.
5. Mr. Javed Ali the learned AC for the department submitted that the Commissioner (Appeals) has rightly refused to extend the stay vide order dated 17.12.2018 beyond sixty days as provided under sub section (4) of section 58 of the Act. He then submitted that attachment notice was properly issued as on the date of issuance of such notice no stay was operating against the department.
6. Mr. Arsalan Siddiqui in rebuttal submitted that the delay in disposal of appeal was not due to the appellant or its representative. He then



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submitted that issuance of attachment notice during pendency of appeal is against the principle of natural justice and due process of law.

We have heard the learned representatives of the parties and perused the record made available before us.

7. The case was remanded to the Commissioner (Appeals) vide order dated 24.03.2016 to determine the value of service regarding funds transfer and then to determine the amount of tax. Mr. Arsalan is correct that a short point is involved, but the Commissioner (Appeals) could not decide the appeal even after lapse of two years and ten months.
8. This case appears to be a case of hardship. The appeal is still pending before Commissioner (Appeals) and during the pendency of appeal the AC Mr. Vickey Dhingra attached bank accounts of the appellant. We found force in the submission of Mr. Arsalan that the attachment during pendency of appeal before Commissioner (Appeals) is against due process of law. It appears that the appellant is not at fault if the appeal was not decided within a reasonable time and cannot be penalized and is entitled to protect its right. Coercive action against the tax payer during pendency of appeal is highly objectionable and Department should avoid such coercive action in the interest of justice and fair play even if the stay is vacated.



9. We have been informed that the appeal is pending before Commissioner (Appeals) and is fixed on 19.02.2019 for hearing. The Commissioner (Appeals) should decide appeals within six weeks from the date of receipt of this order. Keeping in view that the appeal of appellant is still pending before the Commissioner (Appeals) and is fixed for hearing, it appears appropriate to provide a fair chance to the appellant to get its appeal decided on merits.

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10. During hearing the learned representative of the appellant apprehends further coercive action on the part of the department and requested to grant stay even after disposal of this appeal for at least seven days after the disposal of appeal by (Commissioner (Appeals)). The apprehension of the appellant has force as the Department during pendency of appeal attached the bank accounts of the appellant causing loss of business and reputation.

11. In view of above, this appeal is allowed and stay against recovery of tax dues is granted for a period of six weeks from today. The Commissioner (Appeals) will decide the appeal within six weeks from the date of receipt of this order and in case the appeal is decided against the appellant further seven days stay is granted to the appellant to avail remedy available under law. The Commissioner (Appeals) may if deems appropriate anti date the hearing of appeal with notice to both the sides to decide the appeal within the above time.

12. The appeal and stay application is disposed of in the above terms. The copy of this order be provided to the learned representatives of the parties.

(Agha Kafeel Barik)
TECHNICAL MEMBER
Karachi

Dated: 17.01.2019

(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Certified to be True Copy

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

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) Office copy
- ✓ 5) Guard file.