

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD KARACHI
DB-1

APPEAL NO. AT-55/2018

M/s Falcon (Pvt) Ltd.....Appellant

Versus

Assistant Commissioner, SRB, Karachi.....Respondent

Mr. S. M. Rehan, FCA and Mr. Ahsan Iqbal, Senior Manager, Sales Tax for
appellant.

Mr. Vickey Dhingra, AC, SRB for Respondent

Date of hearing: 27.08.2018

Date of Order: 05.09.2018

ORDER

Justice (R) Nadeem Azhar Siddiqi. This appeal has been filed by the
appellant challenging the Order dated 16.08.2018 passed by the Commissioner
(Appeals) in Appeal No. No.140/2018 under section 58 (4) of the Sindh Sales
Tax on Services Act, 2011 refused to extend the stay beyond sixty days.

1. The facts of the case are that Assessing Officer passed order-in-original
No. 488/2018 dated 15.05.2018 which was challenged before
Commissioner (Appeals) by way of filing Appeal No. 140/2018 along with
an application for stay. The stay was granted on 13.06.2018 which
remained effective for sixty days and after expiry of statutory period of
sixty day the department has attached the account and recovered a
considerable amount.
2. The appellant requested Commissioner (Appeals) to extend the stay but
the request was declined vide impugned order due to provision of
Section 58 (4) of the Act.
3. Mr. S. M. Rehan the learned representative for the appellant submitted
that appeal before Commissioner (Appeals) was filed on 06.06.2018 and
was finally heard and reserved for order on 20.06.2018 and since then



M. S. M. Rehan
Ahsan Iqbal

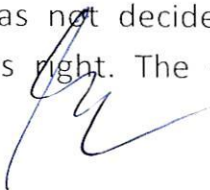
the appeal is still pending before the Commissioner (Appeals) and the appellant is not at fault for delay in disposal of appeal. He then submitted that the stay granted by the Commissioner (Appeals) was expired on 13.08.2018 and the attachment order was issued on 15.08.2018 and on 16.08.2018 the amount from the bank account of the appellant was withdrawn through pay order. He then submitted that appellant was not at fault if the Commissioner (Appeals) has not decided the appeal for a considerable long time and the appellant should not be suffered on account of slackness on the part of the Commissioner (Appeals). He then submitted that the appellant was deprived of its legal rights of approaching an Independent forum. He also submitted that Superior Courts have held that unless the appeal is decided by one independent forum i.e. Appellate Tribunal the forced recovery should not be made. He then submitted that further coercive recovery may be stayed and the Commissioner (Appeals) be directed to dispose of the appeal within a reasonable time to be determined by Tribunal and a protection of seven days may be granted in case the appeal is dismissed by the Commissioner (Appeals).

4. Mr. Vicky Dhingra the learned AC submitted that Commissioner (Appeals) has granted stay on 06.06.2018 and 60 days provided under sub-section(4) of Section 58 was expired on 05.08.2018 as there was no stay operating against the recovery of tax dues the account was rightly attached. He then submitted that pay order received on 16.08.2018 was deposited on same day and was also cleared on same day and placed on record photocopy of CPRs dated 16.08.2018. He supported the order of Commissioner (Appeals) and submitted that the stay cannot be extended beyond statutory period of sixty days.

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

5. This case appears to be a case of hardship. The appeal is still pending before Commissioner (Appeals) and reserved for order and during the pendency of appeal the statutory period for which the Commissioner (Appeals) can grant stay was lapsed. The appellant is not ^{at} fault if the appeal was not decided within a reasonable time and is entitled to protect its right. The Commissioner (Appeals) should decide appeals

102



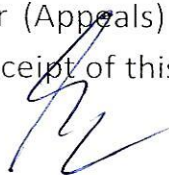
within a reasonable time in which the stay was granted by him to avoid such situation. Coercive action against the tax payer during pendency of appeal is highly objectionable and Department should avoid such coercive action in the interest of justice and fair play even if the stay is vacated. Since the appellant was not at fault it should not be deprived from its usual right to approach an independent forum for redresses of its grievances.

6. This is a case covered by legal maxim *Actus curiae neminem gravabit* (an act of the court shall prejudice no man). In the reported judgment of the Supreme Court (PLD 2016 SC 872) Mr. Justice Saqib Nisar held that "*said principle was founded upon justice and good sense, and afforded a safe and certain guide for the administration of law and justice; it was meant to promote and ensure that the ends of justice were met; it prescribed that no harm and injury to the rights and the interest of the litigants before the court shall be caused by the act or omission of the court.* In the same judgment Mr. Justice Ejaz Afzal Khan has held that "*Actus curiae neminem gravabit*" had been founded upon the principles of justice and good conscience. This maxim appears to be as old as the Court itself. The rationale behind this maxim is to undo the wrong or prejudice caused to a party by the act of the court.

7. During hearing the learned representative of the appellant apprehends further coercive action on the part of the department requested to grant stay even after disposal of this appeal and at least seven day stay 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.

8. Keeping in view that the appeal of appellant is still pending before the Commissioner (Appeals) and is fixed for order it appears appropriate to provide a fair chance to the appellant to get its appeal decided on merits.

9. In view of above, this appeal is allowed and stay against recovery of tax dues is granted for a period of forty five days from today. The Commissioner (Appeals) will decide the appeal within thirty days from the date of receipt of this order and in case the appeal is decided against

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the appellant further seven days-time is allowed to the appellant to avail remedy available under law.

10. 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

(Justice[®] Nadeem Azhar Siddiqi)

CHAIRMAN

Karachi

Dated: 05.09.2018

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) Office copy
- 5) Guard file.

Certified to be True Copy

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD