

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD KARACHI
DB-I

APPEAL NO. AT-56/2018

M/s Indus Pharma (Pvt) Limited.....Appellant

Versus

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

Mr. Aijaz Ahmad ACA for appellant along with Ms. Farah Junaid for appellant

Ms. Pirah Ashfaq AC, SRB for Respondent

Date of Filing of Appeal: 28.08.2018

Date of hearing: 01.10.2018

Date of Order: 10.10.2018

ORDER

Justice (R) Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order dated 30.08.2018 passed by the Commissioner (Appeals) in Appeal No. No.68/2018 under section 58 (4) of the Sindh Sales Tax on Services Act, 2011 refused to extend the stay beyond sixty days.

The facts of the case are that Assessing Officer passed order-in-original No. 86/2018 dated 01.03.2018 which was challenged before Commissioner (Appeals) by way of filing Appeal No. 68/2018 along with an application for stay. The stay was granted on 06.04.2018 which remained effective for sixty days and lapsed after expiry of statutory period of sixty days.

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.

M. Azhar Siddiqi

[Signature]

3. On 03.09.2018 Mr. Aijaz Ahmed appeared and submitted that the appeal is still pending before the Commissioner (Appeals) but the stay granted by Commissioner (Appeals) was vacated under sub-section(4) of Section 58. He then submitted that the stay was granted on 06.04.2018 and the hearing was not completed and the appellant was not at fault. He then submitted that the provisions of sub-section (4) of Section 58 is directory and not mandatory and relied upon the reported judgment of Islamabad High Court in the case of Dowell Schlumberger (Western) SA, 2016 PTD 1702. He then submitted that it is now well settled law that unless the matter is decided by at least one independent forum the recovery of tax is not justified.
4. On 01.10.2018 Mr. Aijaz Ahmed submitted that Assessment Order was challenged before the Commissioner (Appeals) on the ground that assessment order was passed only on the basis of entries available in the audited financial statements for the Financial Years July-2013 to June-2016. He then submitted that respondent has taken value of service inclusive of Sindh Sales Tax and charged sales tax without excluding the sales tax and the exempt pharmaceutical supplies were also taxed.
5. Mr. Aijaz submitted that the pendency of appeal is not due to delaying tactics of the appellant but due to lengthy procedure of reconciliation and the appellant representative was regularly appearing in the hearing. He then submitted that the appellant has a legal right to be heard by an independent forum before recovery of tax. He then submitted that in case the stay is not granted the department will attach bank accounts of the appellant and will recover the tax amount which is not due and payable by the appellant and this will cause heavy financial and reputation losses to the appellant.
6. Ms. Pirah Ashfaq AC submitted that the Commissioner (Appeals) cannot grant stay before 60 days and the stay on expiry of 60 days was automatically stands vacated. She then submitted that any order or observation on merits will prejudice the case of both the parties.



A handwritten signature in black ink, appearing to be 'A. Aijaz', written over the bottom of the text area.

7. This case appears to be a case of hardship. The appeal is still pending before Commissioner (Appeals). From the record it appears that 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 within a reasonable time in which the stay was granted by him to avoid such situation. 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 after the decision of Commissioner (Appeals).
8. 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.
9. 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.
10. 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 the appellant further seven days-time is allowed to the appellant to avail remedy available under law.

11. 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

Certified to be True Copy

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Karachi

Dated: 09.10.2018

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.

