

(Guard file)

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD KARACHI  
DB-1

APPEAL NO. AT-60/2018

M/s ABM Engineering, Karachi.....Appellant

Versus

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

Mr. Javed Akhtar Rind, Advocate for appellant along with Mr. Muhammad Pervaiz Almani, Managing Partner of appellant.

Mr. Bilal Ahmad Faruqi, AC, SRB for Respondent

Date of Filing of Appeal: 17.09.2018

Date of hearing: 10.12.2018

Date of Order: 13.12.2018

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.157/2018 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. 579/2018 dated 31.05.2018 which was challenged before Commissioner (Appeals) by way of filing Appeal No. 157/2018 along with an application for stay. The stay was granted on 02.07.2018 which remained effective for sixty days. The appellant on 30.08.2018 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.
2. Mr. Javed Akhtar Rind the learned advocate for the appellant submitted that appeal before Commissioner (Appeals) is still pending for want of reconciliation to be prepared by the learned AC and the appellant is not



*(Handwritten signature)*

at fault for delay in disposal of appeal. He then submitted that the stay granted by the Commissioner (Appeals) was expired on 30.08.2018 due to which this appeal has been filed. 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) and the Department. 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 coercive recovery may be stayed and the Commissioner (Appeals) may 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).

3. Mr. Bilal Faruqi the learned AC submitted that Commissioner (Appeals) has granted stay on 02.07.2018 and after expiry of 60 days as provided under sub-section (4) of Section 58 the Commissioner (Appeals) has rightly refused to extend the stay. He then submitted that the reconciliation could not be finalized due to non-providing the required documents by the appellant. 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.

4. The appeal is still pending before Commissioner (Appeals) and during the pendency of appeal the statutory period for which the Commissioner (Appeals) can grant stay was lapsed. The appellant is not <sup>at</sup> 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. 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



*Handwritten signatures and initials.*




from its usual right to approach an independent forum for redresses of its grievances.

5. During hearing the learned representative of the appellant apprehends coercive action on the part of the department and requested to grant stay even after disposal of this appeal and at least seven days stay after the disposal of appeal by (Commissioner (Appeals)). The apprehension of the appellant has force.
6. Keeping in view that the appeal of appellant is still pending before the Commissioner (Appeals) it appears appropriate to provide a fair chance to the appellant to get its appeal decided on merits.
7. 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.
8. 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<sup>®</sup> Nadeem Azhar Siddiqi)

CHAIRMAN

Certified to be True Copy

Karachi

Dated: 13.12.2018

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

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD