

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD KARACHI
DB-1

APPEAL NO. AT-69/2018

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

Versus

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

Date of Filing of Appeal: 26.09.2018

Date of hearing: 10.10.2018

Date of Order: 15.10.2018

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

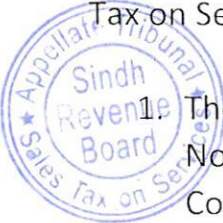
Mr. Vickey Dhingra, AC, SRB for Respondent

ORDER

Justice (R) Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order dated 26.09.2018 passed by the Commissioner (Appeals) in Appeal No. No.166/2018 under section 58 (4) of the Sindh Sales Tax on Services Act, 2011 declined to grant the stay asked for by the appellant.

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. 796/2018 along with an application for stay. The stay application was dismissed on the ground that no prima facie case was made out.

M. Asif



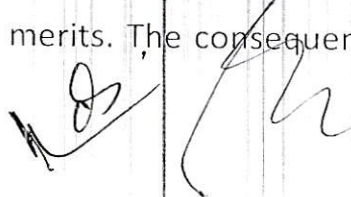
2. Mr. S. M. Rehan the learned representative for the appellant submitted that appeal before Commissioner (Appeals) was filed along with a stay application which was dismissed and the appellant was left at the mercy of the Department. He then submitted that in another appeal of the same appellant the Commissioner (Appeals) vacated the stay under section 59 (4) of the Sindh Sales Tax on Services Act, 2011 and the department by attaching bank account recovered a considerable amount and deprived the appellant from 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) 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. Vicky Dhingra the learned AC submitted that Commissioner (Appeals) supported the order and submitted that on the same facts and grounds earlier appeal of the appellant was dismissed and the Commissioner (Appeals) has rightly held that there is no prima facie case for grant of stay. He further submitted that the appellant by taking false pleas is deliberately avoiding to deposit tax due on it.

4. After arguing the matter to some extent both the parties have agreed for the disposal of this appeal in line with the order dated 05.09.2018 passed in earlier Appeal No. AT-55/2018

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

5. The appeal is pending before the Commissioner (Appeals). When a litigant filed appeal it is his right that he should be heard before any action is taken against him and a fair chance should be given to him to get its appeal decided on merits. The consequence of not granting stay



pending appeal is the grant of license to the department to recover the amount.

6. The stay can be granted to foster cause of justice even if in strict sense prima facie case is not made out. The stay/injunction is a preventive remedy for the purpose of prevention of the subject matter of the appeal and to prevent the party from permanently deprived of the relief. The object of the power given to Commissioner (Appeals) to grant stay or suspend the operation of impugned order is ancillary to main relief to ensure that the appellant is not deprived of the benefit of the appeal and pending appeal the remedy should not be rendered futile and time and unnecessary expenditure be saved in the event appeal ultimately succeed.
7. The Commissioner (Appeals) should considered that the ground raised before him was that appellant is making sales of goods and paying sales tax to FBR and such sales of goods is not a taxable service under Sindh Sales Tax on Services Act, 2011. It is also the right of the appellant that before recovery of tax his appeal be heard and decided on merits by one independent forum i.e. Appellate Tribunal and in case the stay is not granted the department recovered the amount and the appellant will be deprived of his rights of fair hearing.
8. Keeping in view that the appeal of appellant is still pending before the Commissioner (Appeals) it appears appropriate to provide some protection to the appellant.
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 the appellant further seven days-time is allowed to the appellant to avail remedy available under law.



A handwritten signature in black ink is written over the bottom part of point 9. The signature is stylized and appears to be the name of the official who issued the order.

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

Karachi


Dated: 15.10.2018

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.


(Justice [®] Nadeem Azhar Siddiqi)

CHAIRMAN

Certified to be True Copy


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