

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD KARACHI
DB-1

APPEAL NO. AT-93/2018

M/s Kings Food (Pvt) Ltd.....Appellant

Versus

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

Mr. Ahsan Iqbal, ITP for appellant.

Mr. Javed Ali, AC, SRB for Mr. Ghulam Mustufa, AC-SRB for respondent

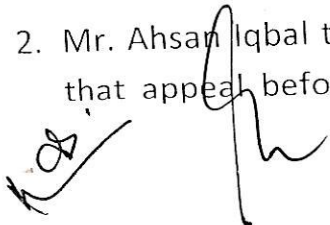
Date of filing of Appeal 22.10.2018
Date of hearing: 19.11.2018
Date of Order: 21.11.2018

ORDER

Justice (R) Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order of the Commissioner (Appeals) in Appeal No. No.38/2018 refusing to extend the stay beyond sixty days as provided under section 58 (4) of the Sindh Sales Tax on Services Act, 2011.

The facts of the case are that Assessing Officer passed order-in-original No. 53/2018 dated 09.02.2018 which was challenged before Commissioner (Appeals) by way of filing Appeal No. 38/2018 along with an application for stay. The stay was granted which remained effective for sixty days and after expiry of statutory period the Commissioner (Appeals) refused to extend the stay.

2. Mr. Ahsan Iqbal the learned representative for the appellant submitted that appeal before Commissioner (Appeals) was still pending and the



appellant is not at fault for delay in disposal of appeal. He then submitted that 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 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).

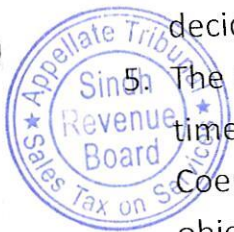
3. Mr. Ghulam Mustufa the learned AC submitted that Commissioner (Appeals) has granted stay and the same cannot be extended beyond sixty days as provided under sub-section (4) of Section 58 of the Act, 2011. He supported the order of Commissioner (Appeals) refusing to extend the stay.

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

4. This case appears to be a case of hardship. 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. Apparently the appellant is not at fault if the appeal was not decided within a reasonable time and is entitled to protect its right.

5. 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 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 speaking for the bench held that "said principle was founded upon justice and good sense, and afforded a safe and certain guide for the administration of



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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 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 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.
8. 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.
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.
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: 21.11.2018

(Justice Nadeem Azhar Siddiqi)

CHAIRMAN

Certified to be True Copy

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

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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.