

(Guard file)

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD KARACHI
DB-1

APPEAL NO. AT-03/2019

M/s Allianz EFU Health Insurance LimitedAppellant

Versus

Commissioner, SRB, Karachi.....Respondent

Mr. Adeel Siddiqui, FCA-ITP for appellant.

Mr. Kaleemullah, AC-SRB and Mr. Babar Ansari AC-SRB for respondent

Date of filing of Appeal 15.01.2019

Date of hearing: 29.01.2019

Date of Order: 29.01.2019

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.364/2018 refusing to extend the stay beyond sixty days as provided under section 58 (4) of the Sindh Sales Tax on Services Act, 2011.

1. The facts of the case are that Assessing Officer passed order-in-original No. 809/2018 dated 26.09.2018 which was challenged before Commissioner (Appeals) by way of filing Appeal No. 364/2018 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 vide order dated 16.01.2019.



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2. Mr. Adeel Siddiqui the learned representative for the appellant submitted that appeal is pending before the Commissioner (Appeals) since October, 2018 and next date is 11.02.2019. He then submitted that appeal is pending for re-conciliation by the department. He further submitted that the appellant apprehends coercive action for recovery of tax on the part of the department during pendency of appeal before Commissioner (Appeals). He also submitted that force recovery without determination of dispute by an independent forum is against the principle of natural justice and due process of law and against the fundamental right of the appellant and in violation of the orders of superior courts.
3. Mr. Adeel further submitted that the appeal was filed on 25.10.2018 and first hearing was conducted on 08.11.2018 and thereafter the hearings were fixed on 11.12.2018, 10.01.2019 and now 11.02.2019. He then submitted that adjournments/extensions were sought by the appellant as the association of appellant is engaged in negotiation with SRB. 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).
4. Mr. Kaleemullah 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. He then submitted that the delay in disposal of appeal was caused due to extensions sought by the appellant.



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 during the pendency of appeal the

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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.

6. 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.
7. We found force in the arguments of the appellant that the coercive action for recovery should not be initiated by the department till the matter is heard by an independent forum (Appellate Tribunal).
8. During hearing the learned representative of the appellant apprehends coercive action on the part of the department and requested for grant of stay after the disposal of appeal by Commissioner (Appeals) and to grant stay of atleast seven days after disposal of this appeal. 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 on 11.02.2019 it appears appropriate to provide protection against coercive recovery and a fair chance to the appellant to get its appeal decided on merits.
10. Both the learned representatives will avoid obtaining unnecessary adjournments.
11. In view of above, this appeal is allowed and stay against recovery of tax dues is granted for a period of thirty days from today. The Commissioner (Appeals) will expeditiously proceed with the appeal pending before him and decide the same within thirty days from the date of receipt of this order and in case the appeal is decided against the appellant further

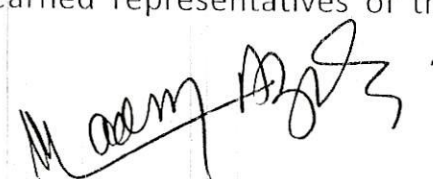


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seven days stay is granted to the appellant to avail remedy available to it under law.

12. 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 Kafaeel Barik)
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi

Dated: 29.01.2019

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REGISTRAR
APPELLATE TRIBUNAL
SINDH REVIEW BOARD

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.